IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PUERTO RICO, *Petitioner*,

v.

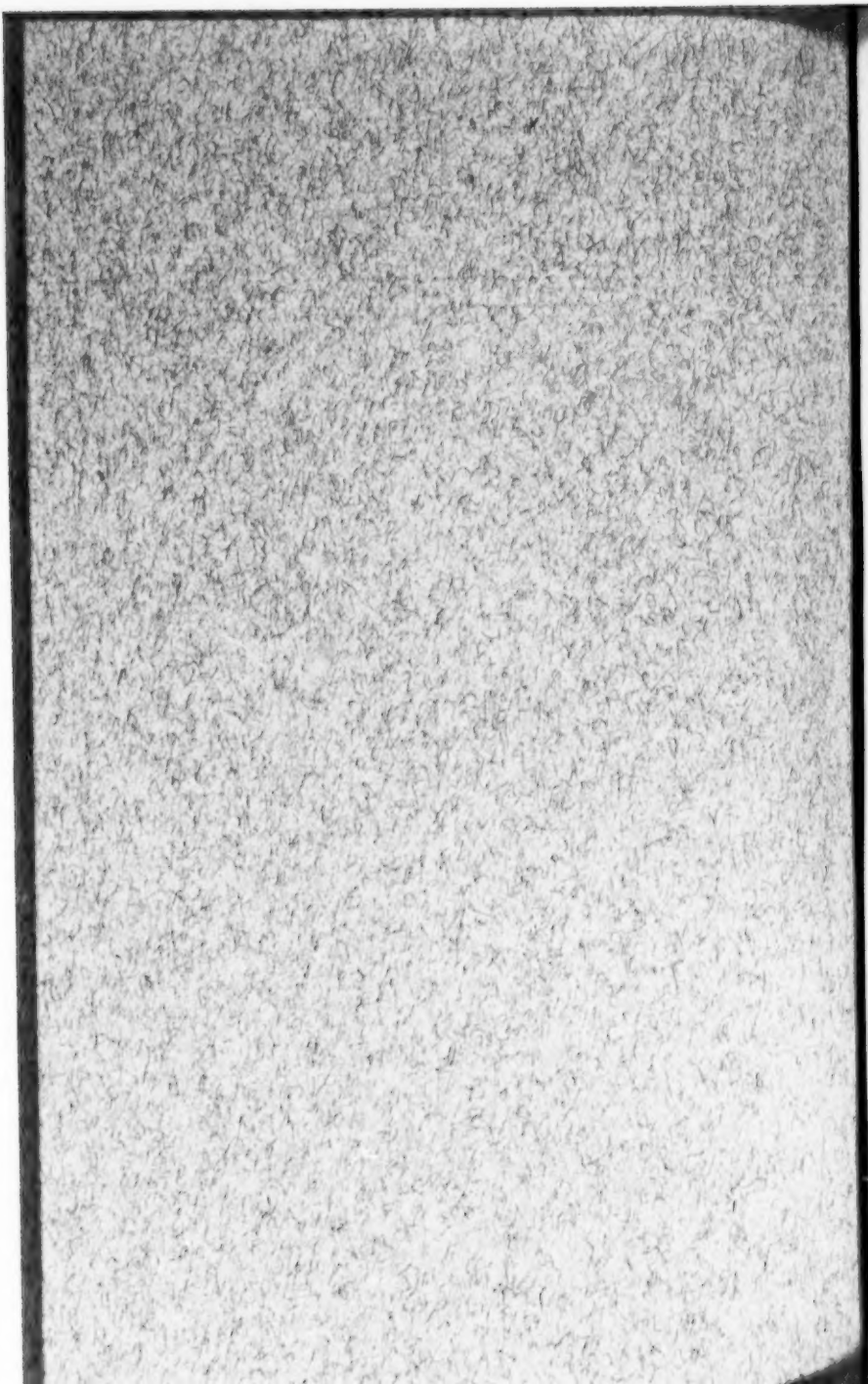
RUSSELL & CO., *Succrs. S. en C.*, HORACE HAVEMEYER, FRANK A. DILLINGHAM, EDWARD S. PAINE, FRANK M. WELTY, EDWIN L. ARNOLD *and* H. B. ORDE, *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT,
AND
SUPPORTING BRIEF

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SUBJECT INDEX

	Page
PETITION	1-17
PRAYER	1
QUESTIONS PRESENTED	2-4
STATUTES INVOLVED	4-7
STATEMENT	7-13
Antecedent Facts	7-10
Complaint	10
Petition for Removal	10
Order of Removal	10-11
Motion to Remand	11
Order Denying Motion to Remand	11
Amended Complaint	11
Answer	11-12
Agreed Statement of Facts	12
Opinion and Judgment of District Court	12
Opinion and Judgment of Circuit Court of Appeals	12-13
PETITIONER'S CONTENTIONS	13-14
REASONS FOR GRANTING THE WRIT	14-17
CONCLUSION	17
BRIEF IN SUPPORT OF PETITION	18-56
OPINIONS BELOW	18
JURISDICTION TO ISSUE WRIT	18
QUESTIONS PRESENTED—See Petition	2-4
STATUTES INVOLVED—See Petition	4-7
STATEMENT—See Petition	7-13
ERRORS TO BE RELIED UPON—See "Petitioner's Contentions" and "Reasons for Granting the Writ", in the Petition	13-17
SUMMARY OF ARGUMENT—See "Petitioner's Contentions" and "Reasons for Granting the Writ", in the Petition	13-17
ARGUMENT	19-56
Point I—The federal District Court had no jurisdiction of this case	19-39
Point II—Puerto Rican Act No. 49 of 1921 does not violate the Puerto Rican Organic Act by impairment of the obligations of the contracts of 1914	39-50

Page

Point III—Nor by delegating legislative powers to administrative officials 50-56

CONCLUSION 56

APPENDICES 57-93

I—Puerto Rican Act No. 49 of 1921 57-59

II—Pertinent extracts from the Puerto Rican Act of Sept. 18, 1908 60-65

III—Pertinent extracts from Puerto Rican Act No. 128 of Aug. 8, 1913 66-77

IV—Puerto Rican Code provisions showing characteristics of *sociedad en comandita* 78-90

V—Supplemental memoranda for respondents in *Great Southern Fire Proof Hotel Co.* v. *Jones*, 177 U. S. 449 91-93

TABLE OF CASES

Baltimore v. State, 15 Md. 376; 74 Am. Dec. 572 53-54

Bruitt & Co. v. Austin Drainage Excavator Co., 174 Fed. 668 27,36

Burgess v. Pue, 2 Gill. 11 54

Carter v. Producers' Oil Co., Ltd., 182 Penn. St. 551; 38 Atl. 571 30,32

Chapman v. Barney, 129 U. S. 677 21,27

Chappell v. Waterworth, 155 U. S. 102 39

Charles River Bridge v. Warrens Bridge, 11 Pet. 420 46

Chicago Theological Seminary v. Illinois, 188 U. S. 662 .. 45

Cintron v. Colorado, 22 P. R. 541 22

Coal Co. v. Rogers, 108 Penn. St. 147 29,31

Columbia Digger Co. v. Rector, 215 Fed. 618 27,37

Empire Rice Mill Co. v. Neumond, 199 Fed. 800 27,37

Erie Ry. Co. v. Pennsylvania, 21 Wall. 492 46

Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112 50,52

Ford v. Delta & Pine Land Co., 164 U. S. 662 46

French v. Barber Asphalt Paving Co., 181 U. S. 324 ... 52

Gallardo v. Havemeyer, 21 F. (2d) 1012 10

Goico v. Russell & Co., 4 F. (2d) 7 11,27

Great Northern Ry. Co. v. Alexander, 246 U. S. 276 ... 39

Great Southern Fire Proof Hotel Co. v. Jones, 177 U. S. 449 15,22,25,27,28,30,31,33,34,35,38

Hill v. Stetler, 127 Penn. St. 145, 17 Atl. 887 29,31

Kansas City Ry. Co. v. Road District, 266 U. S. 379 ... 53

Lombard v. West Chicago Park Com., 181 U. S. 33 52

Page
Louisville & Nashville R. R. v. Mottley, 211 U. S. 149.. 39
Louisville R. R. Co. v. Letson, 2 How. 497.....24,25,26,30, 32,33,34,35,38
Martinez v. Asociacion de Senoras, 213 U. S. 20..... 21
Mayor, etc., of Baltimore v. State, 15 Md. 376; 74 Am. Dec. 572 53-54
McLaughlin v. Hallowell, 228 U. S. 278.....22,27,35
Metropolitan Street Ry. Co. v. New York, 199 U. S. 1... 40, 44-47
Milheim v. Moffat Tunnel Dist., 262 U. S. 710..... 53
Murray v. Charleston, 96 U. S. 432.....42,44
People of Porto Rico v. Fortuna Estates, 279 Fed. 500 (Certiorari denied 259 U. S. 587).....11,26,27,35,36,38
People v. Rivera Zayas, 29 P. R. 423.....21-24,37
Providence Bank v. Billings, 4 Pet. 514..... 45
Quintana v. Ramirez & Co., 22 P. R. 707..... 22
Ralya Market Co. v. Armour & Co., 102 Fed. 530..... 22
Smallwood v. Gallardo, 275 U. S. 56..... 10
Society for Savings v. Coite, 6 Wall. 594..... 40
Spencer v. Merchant, 125 U. S. 345.....48-50
Stanislaus County v. San Joaquin C. & I. Co., 192 U. S. 201 41
St. Louis & San Francisco Ry. Co. v. James, 161 U. S. 545 21,24,26
South Porto Rico Sugar Co. v. Sepulveda, 27 P. R. 310.. 11
Successors of M. Lamadrid & Co. v. Martorell, 28 P. R. 824 23
Tennessee v. Bank of Commerce, 152 U. S. 454..... 39
Van Cleve v. Passaic Valley Sewerage Commission, 71 N. J. L. 574; 60 Atl. 214.....54,55
Vicksburg &c R. R. Co. v. Dennis, 116 U. S. 665..... 45
Wagner v. Baltimore, 239 U. S. 207..... 52
Welch v. Coglan, 126 Md. 1; 94 Atl. 384..... 54
Wells v. Savannah, 181 U. S. 531..... 45
Wilmington & Weldon R. R. Co. v. Alsbrook, 146 U. S. 279 46
Woodruff v. Trapnall, 10 How. 190..... 39

STATUTES CITED

FEDERAL:
Judicial Code of the United States (Act of Mar. 3, 1911; 36 Stat. 1087, *et seq.*)
Sec. 24 (36 Stat. 1091; 28 USCA 41).....2,5,38

Page
Sec. 28 (36 Stat. 1094; 28 USCA 71) 2,5,10
Sec. 240(a), as amended by Act of Feb. 13, 1925 (43 Stat. 938) 18
Sec. 240(b), as amended by Act of Feb. 13, 1925 (43 Stat. 939) 16,17
Organic Act for Puerto Rico (Act of Mar. 2, 1917, 39 Stat. 951, *et seq.*)
Sec. 2 (39 Stat. 951; 48 USCA 737) 3,4
Sec. 25 (39 Stat. 958; 48 USCA 811) 4,55
Sec. 37 (39 Stat. 964; 48 USCA 821) 4
Sec. 41 (39 Stat. 965; 48 USCA 863) 4
Sec. 42 (39 Stat. 966; 48 USCA 864) 2,4
Sec. 48, as amended by Act of Mar. 4, 1927 (44 Stat. 1421) 9
Act of April 23, 1928, c. 411, 45 Stat. 447 10
PUERTO RICAN:
Code of Commerce:
Extracts from—Appendix IV 78-81
Cited 6,11,19
Civil Code:
Extracts from—Appendix IV 81-88
Cited 6,11,19
Code of Civil Procedure:
Extracts from—Appendix IV 89-90
Cited 6,11,19
Political Code, Secs. 308 and 310 52
Act of Sept. 18, 1908:
Extracts from—Appendix II 60-65
Cited 6,7,14
Act No. 74 of Mar. 9, 1911 7
Act No. 128 of Aug. 8, 1913:
Extracts from—Appendix III 66-77
Cited 6,8,14,40,56
Sec. 13, quoted 8
Act No. 49 of 1921:
Text in full, Appendix I 57-59
Cited 1,2,3,4,6,9,12,13,14,39,40,48,50,56
STATE:
Pennsylvania Act of June 2, 1874 (P. L. 1874, pp. 271, *et seq.*; 2 Purdon's Dig., 13th Ed., pp. 2023, *et seq.*) 28, 29,31,32,33,91
Iowa Code of 1897, Sec. 3468 35

OTHER AUTHORITIES CITED

	Page
34 Cyc. pp. 1261, 1263	21,22
37 Cyc. p. 725	54
Sanchez Roman, 2nd Ed., Vol. 11, p. 144	23
Cooley on Taxation, 2nd Ed., 51, 63, 65	54
Cooley on Taxation, 4th Ed., Vol. 1, Sec. 31	52
Taxation by Assessment, Page and Jones, Vol. 1, Sec. 267	52

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RUSSELL & CO., *Sucrs., S. en C.*, HORACE HAVEMEYER, FRANK A. DILLINGHAM, EDWARD S. PAINE, FRANK M. WELTY, EDWIN L. ARNOLD *and* H. B. ORDE, *Respondents.*[1]

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the First Circuit, entered in this cause on June 27, 1932, affirming a judgment of the District Court of the United States for Puerto Rico, declaring invalid Puerto Rican Act No. 49 of 1921, and dismissing petitioner's suit for collection of special assessments under that Act.

A rehearing was denied on August 5, 1932 (R. 124).

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[1] This action was initiated against Russell & Company, a *sociedad en comandita*, organized and existing under the laws of Puerto Rico, as the sole party defendant (Complaint, R. 87-91). The individual respondents are the individual mem-

QUESTIONS PRESENTED

1. Does a suit begun in an insular district court of Puerto Rico, by The People of Puerto Rico, against a *sociedad en comandita*[2] organized under the laws of Puerto Rico, as the sole party defendant, none of whose individual members is, however, a citizen of Puerto Rico, involve such diversity of citizenship as, upon that ground alone, to invest the United States District Court for the District of Puerto Rico with jurisdiction upon petition for removal by the individual members of the *sociedad* (whom the plaintiff had not made parties defendant to the suit), under section 42 of the Organic Act for Puerto Rico (Act of March 2, 1917, 39 Stat. 951, 966; 48 USCA 864) and sections 24 and 28 of the Judicial Code of the United States (Act of March 3, 1911, 36 Stat. 1091 and 1094; 28 USCA 41 and 71)?

2. Is Puerto Rican Act No. 49 of 1921, imposing upon all lands irrigated from the Southern Coast Public Irrigation

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bers of that *sociedad*, who first came into this cause by their special appearance in their petition for removal of the case from the insular District Court of San Juan, Puerto Rico, to the United States District Court for Puerto Rico (R. 6-9), and who have been permitted ever since to continue as individual parties to the action. But petitioner-plaintiff instituted the suit in the insular court against the *sociedad* alone, and insists here, as it did in each of the lower courts, that the respondent *sociedad*, in its separate capacity as a juridical person, under the Puerto Rican laws, was the sole proper party defendant and appellee in the lower courts, and is in reality the sole proper party respondent here. The individuals are, however, named here as additional parties respondent because the lower federal courts allowed them to force their way into this suit and to remove it to the federal courts.

[2] *Sociedad en Comandita* is imperfectly translated in the official English versions of the Civil Code and of the Code of Commerce as "limited partnership." But the concept of the Spanish civil law *sociedad* is wholly different from that of the common law "partnership" (see *infra*, pp. 19-25). The *sociedad* is always inherently a juridical person.

System, not theretofore taxed on that account, a special annual assessment for their respective *pro rata* shares of the annual costs of operating and maintaining that system, invalid as violating, when applied to lands of the respondent *sociedad*, paragraph 5 of section 2 of the Organic Act for Puerto Rico (Act of March 2, 1917, 39 Stat. 951; 48 USCA 737), by impairing the obligations of contracts theretofore made in 1914 between the People of Puerto Rico and the owners of those lands, whereby the latter, in exchange for water rights under preexisting government concessions appurtenant to their lands, were granted the rights thereafter to receive from that system, for the irrigation of those lands, water in specified amounts at specified times and places, which was agreed to be the equivalent in value of the preexisting concessions?

3. Are those parts of Puerto Rican Act No. 49 of 1921 in substance requiring the insular Treasurer to determine the amount of each annual levy thereunder primarily upon an estimate to be made by the insular Commissioner of the Interior of the cost of operating and maintaining the system for the ensuing year, invalid as an attempted delegation of legislative power to executive officials, in violation of the Organic Act for Puerto Rico (Act of March 2, 1917, 39 Stat. 951 *et seq.*; 48 USCA 731 *et seq.*)?

Each of the foregoing questions was answered in the affirmative by the United States Circuit Court of Appeals for the First Circuit; and that court, regarding those answers as decisive of the case, based its ultimate conclusions and judgment thereon, without discussion of other questions involved (Op. C.C.A.; R. 93-106). However, the respondent-defendant urged and the trial court held that the insular act was invalid also upon the further grounds that as applied to the lands in question it violates the due process, equal protection, and uniformity of taxation clauses of the Organic Act, and also violates the Treaty of Paris (Op. Dist. Court, R. 75-76).

Petitioner contends that each of the questions above stated should have been answered in the negative; that in-

sular Act No. 49 of 1921 is valid; and that, in any event, the federal courts did not get jurisdiction through the removal petition of the individual members of the *sociedad*, whom the plaintiff had not made defendants to the suit, and that the cause should be remanded to the insular courts.

STATUTES INVOLVED

Federal:

(1) The Organic Act for Puerto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951) provides:

> Sec. 2. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. * * *
>
> That no law impairing the obligation of contracts shall be enacted. * * *
>
> That the rule of taxation in Porto Rico shall be uniform. (39 Stat. 951, 952; 48 USCA 737).
>
> Sec. 25. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "the Legislature of Porto Rico." (39 Stat. 958; 48 USCA 811).
>
> Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable * * *. (39 Stat. 964; 48 USCA 821).
>
> Sec. 41. That Porto Rico shall constitute a judicial district to be called "the District of Porto Rico." * * * The district court for said district shall be called "the District Court of the United States for Porto Rico." * * * Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. * * * Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico, wherein the matter in dispute

exceeds, exclusive of interest or costs, the sum or value of $3,000, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid; * * *. (39 Stat. 965; 48 USCA 863).

Sec. 42. That the laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several states shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico * * *. (39 Stat. 966; 48 USCA 864).

(2) Section 24 of the Judicial Code of the United States (Act of March 3, 1911, c. 231, 36 Stat. 1087, 1091; 28 USCA 41),[3] provides:

Sec. 24. The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different states, or (c) is between citizens of a State and foreign States, citizens, or subjects * * *.

(3) Section 28 of the Judicial Code of the United States (Act of March 3, 1911, c. 231, 36 Stat. 1087, 1094; 28 USCA 71), provides:

Sec. 28. Any suit of a civil nature, at law or in equity arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United

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[3] Although the petitioner does not regard this statute as among those properly involved (*infra*, p. 38), it is anticipated that the respondent may argue that it bears on the question of the jurisdiction of the trial court.

> States are given original jurisdiction, * * * in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction, * * * in any State court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that State. * * *

Insular:

(1) Certain provisions of the Puerto Rican Civil Code, of the Code of Commerce, and of the Code of Civil Procedure, define the characteristics of the *sociedad en comandita* as it exists in Puerto Rico under the Spanish civil law, and show among other things that it has complete juridical personality; and that, like a corporation, it acts; contracts; acquires, holds and conveys property; and sues and is sued; all in its own separate name and capacity, distinct and apart from its individual members. The official Spanish texts of these provisions, with English translations, are in Appendix IV to this pamphlet, *infra*, pp. 78-90.

(2) Act No. 49 of the Legislature of Puerto Rico, approved July 8, 1921 (Laws of Puerto Rico, 1921, p. 366), the act under attack in this case, of which the full text appears in Appendix I to this pamphlet (*infra*, pp. 57-59).

(3) The Act of the Legislature of Puerto Rico approved September 18, 1908, called the "Public Irrigation Law" (Laws of Puerto Rico, Special Session, 1908, pp. 44-70), provides for the construction, maintenance and operation of the irrigation system to which the Act of 1921 last above mentioned relates, of which Act of 1908 pertinent extracts appear in Appendix II to this pamphlet (*infra*, pp. 60-65).

(4) Act No. 128 of the Legislature of Puerto Rico, approved August 8, 1913 (Laws of Puerto Rico, Extra Session 1913 and Regular Session 1914, pp. 54-84), amends the Act of September 18, 1908, further provides for the construction,

maintenance and operation of the irrigation system in question, and authorizes the contracts set up in the answer, of which Act of 1913 pertinent extracts appear in Appendix III to this pamphlet (*infra*, pp. 66-77).

> NOTE.—The act of September 18, 1908, *supra*, was also amended by Act No. 74, approved March 9, 1911 (Laws of Puerto Rico, 1911, pp. 237-243), but not in any particular materially affecting the questions presented here.

STATEMENT

ANTECEDENT FACTS

The Southern Coast Public Irrigation System of Puerto Rico is comprised generally within the area on the south slope of the Island between and inclusive of the valleys of the rivers Patillas and Portugues, including the valley of the river Jacaguas (Sec. 1, act of Sept. 18, 1908, *infra*, p. 60). The works include a dam and reservoir in the upper Jacaguas valley, to impound the headwaters of that river and those of the river Toro Negro brought by tunnel through the divide from the well-watered north slope (R. 34-35).

At the time of the initiation of the project there were, within the area generally included within its scope, certain plantations each with appurtenant water rights acquired by concessions from the former Spanish government, or by appropriation and prescription, including the six plantations in the Jacaguas valley, then owned by grantors of the respondent *sociedad* and now held by that *sociedad*, four of them as owner and two as lessee, each of which had an appurtenant right to take certain waters from the Jacaguas River (R. 13, 15-22, 33-34, 49-50, 67-71).

It being apparent that the construction and operation of the system might impair these existing water rights, the Legislature provided in the act of 1908 for their extinguishment by condemnation, or by voluntary surrender in exchange for reduced rates of assessment (Appendix II, *infra*, pp. 61-63), and

in the Act of 1913 (Appendix III, *infra*, pp. 66, 75), provided further:

> Section 13. In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession.
>
> The Commissioner of the Interior is hereby authorized to negotiate with the owner or owners of such water rights or concessions, * * * and the said Commissioner of the Interior shall be empowered to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof, which shall be delivered to the land to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof, with the power on behalf of the Irrigation Service to enter into agreement with such owner or owners for the relinquishment to The People of Porto Rico of such water rights or concessions, and for the delivery to the lands to which the said water rights or concessions are appurtenant of such fair equivalent.

Pursuant to the statutory authority last above quoted, the insular Commissioner of the Interior, on behalf of the People of Puerto Rico, and the then owners of the six plantations above mentioned, grantors of the respondent *sociedad*, made the contracts of August 26, 1914, which are set forth as Exhibits A and B to the answer, whereby the People of Puerto Rico agreed in substance to deliver from the irrigation system, to each of those plantations, specified quantities of water at specified times and places, agreed to be the equivalent in value of the preexisting water rights, and the owners of those plantations, respectively, during continuance of the specified deliveries, and in consideration thereof, agreed in substance to the suspension of their preexisting concessions and prescriptive rights. *Nothing was said in those contracts about taxes or as-*

sessments upon the rights thereby granted, or upon the lands therein described for benefits accruing thereto by the construction, maintenance and operation of the Irrigation System (R. 33-48, 49-61).

Up to the time of the trial of this case the contracts were still in force, and the lands therein described had continuously since 1915 received all of the waters to which they were entitled thereunder (par. 20, Agreed Statement, R. 72-73). But those lands, although thus supplied with water from the system, were not originally included within the irrigation district and, prior to the enactment of Act No. 49 of 1921, *supra*, had never been assessed for any part of the costs of the construction, maintenance or operation of the system (par. 21, Agreed Statement, R. 73). Since the enactment of Act No. 49 of 1921, *supra*, the Treasurer of Puerto Rico has levied and assessed thereunder against each of the plantations above mentioned, a special assessment for each fiscal year beginning with the fiscal year 1922-23, in amounts aggregating up to the time of the trial of this case the sum of $49,918.56, exclusive of interest and penalties for the same period, amounting to $11,698.48 (par. 23, Agreed Statement, R. 73-74). The respondent *sociedad* in 1917 acquired title to four of the plantations by deed, and possession of the other two by lease, and from that time until the trial of this case continued in possession thereof and liable for all taxes and assessments thereon (pars. 11 and 19, Agreed Statement, R. 69, 72).

Upon assessment of the plantations above described under the act of 1921 for the fiscal year 1922-23, the respondent *sociedad* brought suit in the United States District Court for Puerto Rico (in the names of its individual members) against the Treasurer of Puerto Rico to enjoin the collection of the tax. That court granted the injunction and the Treasurer of Puerto Rico then appealed to the United States Circuit Court of Appeals for the First Circuit, where the case was pending at the time of the passage of the so-called "Butler Act" of March 4, 1927, Section 7 of which so amended Section 48 of

the Organic Act for Puerto Rico as to deny to the United States District Court for Puerto Rico jurisdiction of any suit to restrain the assessment or collection of any Puerto Rican tax (44 Stat. 1418, 1421); and, after the decision of this court in *Smallwood* v. *Gallardo*, 275 U. S. 56, that injunction suit was dismissed for want of jurisdiction, under the authority of the latter case (*Gallardo* v. *Havemeyer*, 21 F. (2d) 1012).

Shortly thereafter Congress passed the act of April 23, 1928, c. 411, 45 Stat. 447, in effect limiting the petitioner to suit at law as the sole means of enforcing collection of the taxes in question.

COMPLAINT

The present action was initiated by the petitioner in the insular District Court of San Juan, Puerto Rico, by complaint filed June 24, 1930, against "Russell & Co., S. en C., Defendant" to recover the assessments, penalties and interest above mentioned in the sum of $61,617.04 (R. 87-91).

PETITION FOR REMOVAL

On July 23, 1930, the individual respondents, appearing specially for that purpose, filed in the insular District court their petition for removal of the case to the United States District Court for Puerto Rico, alleging in substance that they were the only members of the respondent *sociedad;* that five of them were citizens of certain states of the United States; that the sixth was a citizen of Canada; that none of them was a resident of or domiciled in the Island of Puerto Rico; and asking that the case be removed to the federal District Court upon the sole ground of diversity of citizenship between the parties (R. 6-9).

ORDER OF REMOVAL

On July 29, 1930, the insular District Court granted the petition and ordered the case removed to the federal court (R. 10) citing section 28 of the Federal Judicial Code, *supra*,

and the cases of *People of Porto Rico* v. *Fortuna Estates*, 279 Fed. 500; *Goico* v. *Russell & Co.*, 4 F. (2d) 7; and *South Porto Rico Sugar Co.* v. *Sepulveda*, 27 P. R. 310.

MOTION TO REMAND

In the federal District Court on August 14, 1930, petitioner filed its motion to remand the case to the insular District Court on the ground that the respondent *sociedad*, organized and existing as a so-called "civil limited partnership" [4] under the laws of Puerto Rico, was legally equivalent to a corporation in so far as its status as a party litigant was concerned, and that therefore there was no diversity of citizenship (R. 11-12).

ORDER DENYING MOTION TO REMAND

On the same date the United States District Court for Puerto Rico denied the motion to remand, to which your petitioner duly excepted (R. 80).

AMENDED COMPLAINT

Your petitioner on November 13, 1930, by leave of court, filed in the United States District Court its amended complaint in which some of the allegations of the original complaint were elaborated without, however, any change affecting the present questions (R. 1-6).

DEFENDANTS' ANSWER

On December 19, 1930, the individual respondents representing themselves as "constituting the civil agricultural partnership of Russell & Co., Sucesores, S. en C., the defendants in the above entitled action," filed their answer to the amended complaint (R. 13-61), admitting generally the essential allegations of fact of the amended complaint, setting up the contracts of August 26, 1914, above mentioned, and at-

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[4] The inaccurate phraseology of the official English translation of the Codes. (Cf. *infra*, pp. 19-25).

tacking the validity of the insular statute upon the various grounds indicated above under the heading of "Questions Presented," *supra*, pp. 2-4.

AGREED STATEMENT OF FACTS

After your petitioner had demurred generally to the answer (R. 61) and the demurrer had been overruled (R. 80), the case was tried by the United States District Court for Puerto Rico upon an agreed statement of facts (R. 66-75).

OPINION AND JUDGMENT OF THE DISTRICT COURT

On December 7, 1931, the United States District Court for Puerto Rico handed down its opinion (R. 75-76) finding in favor of the defendants and against the plaintiff, and declaring Act No. 49 of 1921 invalid upon the grounds (1) that it impairs the obligations assumed by the Government under the contracts of August 26, 1914; (2) that it takes private property without due process of law; (3) that it violates the uniformity of taxation rule; (4) that it is in conflict with the Treaty of Paris; (5) that it "violates the prohibition of the Organic Act against unequal protection under the law;" (6) that it delegates legislative powers to administrative officials; and (7) that it does not provide for any hearing or appeal. Accordingly, that court, on December 21, 1931, entered judgment for the defendants and against the plaintiff-petitioner (R. 76-77), from which your petitioner duly appealed to the United States Circuit Court of Appeals for the First Circuit, assigning as errors the refusal of the United States District Court to remand the case to the insular District Court and the holding of the United States District Court that Act No. 49 of 1921 was invalid on each of the grounds set forth in the opinion of that court (R. 77-80).

OPINION AND JUDGMENT OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

By its opinion filed June 27, 1932, the court last mentioned affirmed the judgment of the United States District

Court for Puerto Rico, holding in substance that there was no error in the refusal of that court to remand the case to the insular District Court, and declaring Act No. 49 of 1921 invalid upon the grounds of impairment of the obligations of the contracts and of improper delegation of legislative power (R. 93-106). Judgment was entered accordingly on the same day (R. 124). Petition for rehearing (R. 107-123) was denied August 5, 1932 (R. 124).

PETITIONER'S CONTENTIONS

(1) *As to the jurisdictional question*: The *sociedad en comandita*, organized and existing under the civil laws of Puerto Rico, actually possesses all of the distinctive legal characteristics of a corporation; is in legal principle and substance a corporation rather than a partnership, and is so held by the local court of last resort, the Supreme Court of Puerto Rico; and, therefore, with relation to the statutes governing the jurisdiction of federal courts, should be deemed and treated as a corporation; that, since it is organized under the laws of Puerto Rico, there is no diversity of citizenship between the original and only proper parties to this action, viz., the *sociedad* and the People of Puerto Rico; and that for the foregoing reasons the United States District Court for Puerto Rico had no jurisdiction thereof on the petition for removal from the insular District Court, presented by the individual members whom the plaintiff had not made defendants to the suit. (Supporting Brief, *infra*, pp. 19-39);

(2) *As to the question of impairment of the obligations of the contracts*: There is no such impairment, because the contracts did not grant any exemption whatever of the lands therein described from taxation of any kind; Act No. 49 of 1921 constitutes in effect a declaration by the insular Legislature that the lands thereby assessed are specially benefited by the operation and maintenance of the irrigation system, at least to the extent of the assessments imposed; and the enactment of that measure by the insular Legislature con-

stituted a legitimate exercise of its unquestioned and unquestionable authority and power to impose special assessments upon private lands for special benefits derived from public improvements (Supporting Brief, *infra*, pp. 39-50); and

(3) *As to the question of improper delegation of legislative powers*: When Act No. 49 of 1921 is considered in connection with the related prior acts of 1908 and 1913, and with the facts that when Act No. 49 was enacted the irrigation system to which it refers was an established and well-known entity which had been in existence and operating for more than six years, it is apparent that the function of determining annually in advance the approximate reasonable and necessary cost of maintaining and operating the system for the succeeding fiscal year was really an administrative function, involving no legislative discretion, but merely the ascertainment of the facts of previous experience and existing conditions, coupled with computations of the kinds, amounts and costs of labor and material required for the following year, and finally consolidation of the items so computed to find the approximate aggregate sum needed; that it has been the almost universal custom throughout this country from the beginning of its history, in ordinances and statutes providing for local improvements, to delegate such functions to administrative commissions, boards and officials; and that when Congress in the Organic Act for Puerto Rico delegated to the insular Legislature "all local legislative powers in Puerto Rico," it could only have been with the intention that that Legislature should thereby be empowered to follow similar practices and methods with relation to such assessments; and that, therefore, the act here in question, in leaving these details to be determined by the insular official in charge of the operation and management of the system, involves no improper delegation of legislative powers. (Supporting Brief, *infra*, pp. 50-56).

REASONS FOR GRANTING THE WRIT

The jurisdictional question here presented, although it may be of little or no importance in this particular case, is of

very great and widespread importance to the Spanish speaking people of Puerto Rico generally. The rich and powerful *sociedad* respondent in this case is not, by any means, the only one of its kind, owning property and doing business in the Island, but composed exclusively of foreign members. As a general rule the people of Puerto Rico habitually speak the Spanish language, and are unfamiliar not only with the English language, which is exclusively used in the federal court, but also with the practice and procedure of that court. They are accordingly at a distinct disadvantage in the trial in the Federal District Court of cases in which they are parties litigant. It is in the trial courts that the witnesses are heard and the facts are determined.

The inhabitants of Puerto Rico therefore regard it as a serious injustice to them to permit a *sociedad, actually a corporation in all but name,* organized under the laws of and domiciled within Puerto Rico, when suing, or being sued by, a Puerto Rican citizen, to drag its opponent into the unfamiliar and expensive environment of the United States court upon the technical ground that its members, who are really nothing more nor less than stockholders of a corporation, are citizens and residents of other jurisdictions.

In connection with the jurisdictional question, the case, as presented here, involves an important question of local law probably decided in conflict with applicable local decisions. As to the legal character and status of the *sociedad en comandita* under the laws of Puerto Rico, there is a clear conflict of opinion between the United States Circuit Court of Appeals for the First Circuit, as disclosed in its opinion in this and prior cases (Supporting Brief, *infra,* pp. 26-27), and the insular Supreme Court, as indicated by its opinion in *People* v. *Rivera Zayas* (Supporting Brief, *infra,* pp. 21-24).

The Circuit Court of Appeals, by citing and following *Great Southern Fire Proof Hotel Co.* v. *Jones,* 177 U. S. 449 (R. 98), has in effect declared the Puerto Rican *sociedad en comandita* to be nothing more or less than the familiar lim-

ited partnership of the states; whereas the insular Supreme Court, in its opinion last above mentioned, recognizes a definite distinction between those two kinds of entities, and in effect holds the *sociedad en comandita* to possess a juridical status substantially the same as that of a corporation. The question is one which has never been, and, we think obviously should be, finally settled by this Court.

The importance of the questions concerning the validity of the insular taxing statute under attack is self-evident. If the decision of the Circuit Court of Appeals in this case is permitted to stand it means that the whole system of ascertainment, apportionment and assessment of the annual costs of the operation and maintenance of the Southern Coast Public Irrigation System, uniformly followed for more than eighteen years, has been unlawful. The result would be not only the necessity of a prompt and extensive revision of the existing statutes, but, also, in all probability, the institution of numerous actions against the insular Government for refunds of taxes and assessments already collected and expended under those statutes.

Further importance lies in the fact that under the decisions of the lower courts the insular Legislature is faced with the embarrassing alternative of either (1) providing by law for the assessment of an arbitrary annual fixed water rate more than likely to be found in experience to be too high or too low, or else (2) undertaking itself annually to canvass the facts of prior experience and existing conditions and to make the detailed estimate necessary as a basis for determining the precise amount of the annual assessment.

As a further reason for the granting of the writ your petitioner respectfully urges that certiorari might well be granted by this Court almost as a matter of course to review judgments of the Circuit Courts of Appeals in cases which, like this, are closely analogous to those involving state statutes, described in paragraph (b) of section 240 of the Judicial Code of the United States, as amended by the Act of February 13,

1925, c. 229, 43 Stat. 936, 939, but which involve the validity of territorial statutes instead of state statutes. In other words, since Section 240 (b) of the Judicial Code gives a definite right to a review of any judgment of a Circuit Court of Appeals holding a state statute invalid, at the instance of the party relying on such statute, it would seem fair and logical for this Court to make a practice of ordinarily granting certiorari in like cases involving the validity of territorial statutes,—such as, in this case, this act of the Puerto Rican Legislature. This would seem to be especially true where the insular statute in question, as in the present case, constitutes an exercise of the taxing power of the insular Legislature, and the party seeking the review is the insular Government itself.

Your petitioner therefore respectfully urges that the questions presented are such as should be finally settled and determined by this Court, and that this petition be granted.

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BRIEF IN SUPPORT OF PETITION

OPINIONS

The opinion of the United States District Court for Puerto Rico was delivered by District Judge Ira K. Wells and filed December 7, 1931. It is not yet officially reported, but appears on pages 75-76 of the Record.

The opinion of the Circuit Court of Appeals (Circuit Judges BINGHAM, WILSON and MORTON; opinion by Judge BINGHAM) was filed June 27, 1932, and appears on pages 93-106 of the Record. It is reported in 60 F. (2d) 10 (advance sheets).

JURISDICTION

The jurisdiction of this Court to issue the writ of certiorari is invoked under Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938. But the federal courts are without jurisdiction, except to remand to the insular courts. (Point I, *infra*, pp. 19-39).

QUESTIONS PRESENTED

These are stated in the *petition, supra*, pp. 2-4.

STATUTES INVOLVED

These are indicated in the petition, *supra*, pp. 4-7.

STATEMENT

A statement of the case is embodied in the petition, *supra*, pp. 7-13.

ERRORS TO BE RELIED UPON AND SUMMARY OF ARGUMENT

These are set forth under the headings of "Petitioner's Contentions" and "Reasons for Granting the Writ" in the foregoing petition, *supra*, pp. 13-17.

ARGUMENT

POINT I

UNDER THE LAWS OF PUERTO RICO A *SOCIEDAD EN COMANDITA*, SUCH AS THIS RESPONDENT, POSSESSES ALL OF THE LEGAL CHARACTERISTICS OF A CORPORATION AND IS IN PRINCIPLE AND SUBSTANCE A CORPORATION RATHER THAN A PARTNERSHIP. BETWEEN SUCH A *SOCIEDAD* AND A CORPORATION THERE IS NO SUBSTANTIAL DIFFERENCE OF LEGAL STATUS SUCH AS WOULD JUSTIFY A DISTINCTION BETWEEN THE TWO IN THE APPLICATION OF PROVISIONS OF THE FEDERAL CONSTITUTION AND STATUTES DEFINING THE JURISDICTION OF FEDERAL DISTRICT COURTS. THE RESPONDENT *SOCIEDAD*, BEING IN SUBSTANCE A CORPORATE BODY ORGANIZED UNDER AND OWING ITS EXISTENCE TO THE LAWS OF PUERTO RICO, IS A CITIZEN OF PUERTO RICO WITHIN THE MEANING OF THE JURISDICTIONAL STATUTES ABOVE MENTIONED, AND THERE WAS NO DIVERSITY OF CITIZENSHIP IN THIS CASE. THEREFORE, THE FEDERAL COURTS DID NOT ACQUIRE JURISDICTION THROUGH THE PETITION FOR REMOVAL, AND THIS CAUSE SHOULD BE REMANDED TO THE INSULAR COURT.

The respondent Russell & Co., Sucrs., S. en C., is a civil agricultural *sociedad en comandita* (the latter term being commonly but inaccurately translated "limited partnership"), organized under the laws of Puerto Rico (agreed Statement, par. 2, R. 66). As such it is accorded under the civil law in Puerto Rico complete juridic personality with power in its separate name and capacity to hold property and to make contracts and to sue and be sued. As such it possesses all of the essential legal characteristics of a corporation as corporations are commonly known within the United States proper.

Provisions of the insular codes bearing out the foregoing statement have been assembled and quoted from the original Spanish sources, together with English translations of each, in Appendix IV of this pamphlet, *infra*, pp. 78-90.

It will be observed that under those laws all of the artificial personalities created thereunder are called *"compañías"* or *"sociedades"*; that is, in English, "companies" or "associations" (*"societies"*). There is no precise parallel between the

various types of companies or associations authorized under the civil law of Puerto Rico, on the one hand, and the various artificial personalities recognized in the states, on the other.

However, upon examination of the civil laws above mentioned and a comparison between the characteristics of the *sociedad en comandita,* as therein disclosed, and those of the ordinary corporation as we find it in the United States proper, it will be seen that the *sociedad en comandita* possesses all of the essential characteristics of the corporation.

(a) The corporation is created under statutory authority by charter or articles of incorporation. The *sociedad en comandita* is created in a similar manner.

(b) The corporation endures for the period prescribed in its charter or articles of incorporation regardless of the death or withdrawal of individual members. This is true of the *sociedad en comandita* if so provided in its Articles.

(c) The affairs and transactions of the corporation are carried on by managers or agents designated originally in its articles and thereafter elected by its members. The affairs of the *sociedad en comandita* are similarly managed and carried on by managers (in Spanish, *gestores*) similarly chosen.

(d) The corporation is an artificial person with complete and separate juridic status. So is the *sociedad en comandita.*

(e) The stockholders of a corporation have no liability, or only a contingent and limited liability for the acts and debts of the corporation. This is true also of the members of the *sociedad en comandita* with relation to its acts and debts.

(f) The corporation acts, contracts, transacts business, sues and is sued in its corporate name. Likewise the *sociedad en comandita.*

In short, there is nothing in the way of a substantial or distinctive characteristic of the corporation which is not possessed by the *sociedad en comandita.*

Altnough the designation *sociedad en comandita* has come habitually to be translated into English as "limited partner-

ship," the entity thus designated is in truth nothing more nor less then a form of the familiar corporation of American jurisprudence.

The Supreme Court of Puerto Rico has expressly held that the respondent Russell & Co., S. en C. is a juridic entity distinct from its component members, and that the latter have no legal standing as petitioners for removal to the federal court of an action initiated against the *sociedad* in an insular district court. That case presents so clearly the viewpoint of the Puerto Rican court of last resort concerning the juridical character and status of the *sociedad* that we have ventured to quote from the opinion at considerable length, as follows:

> It is conceded by the attorney for the removal petitioners, who came into this court under protest, that in order that a case may be removed a clear diversity of citizenship between the contending parties must be shown and that the case must be one of which the United States Court could have taken jurisdiction originally if the complainant had elected to sue therein. Where all of the parties are natural persons the question is relatively simple, but it becomes complicated where artificial entities like corporations and partnerships are concerned.
>
> In the early cases in the Supreme Court of the United States the question of what was the citizenship of a corporation duly incorporated under the laws of a State was frequently made to depend on the question of the citizenship of the persons who composed the corporation, in other words, on a question of fact. However, as the conception of a corporation as a distinct entity became more or less fixed, the Supreme Court then decided that the citizenship of a corporation was irrebuttably presumed to be that of the State where it was incorporated. *St. Louis & San Francisco R.R. Co.* v. *James*, 161 U. S. 563; *Martinez* v. *Asociacion de Senoras*, 213 U. S. 20; 34 Cyc. 1261. A different question arises where a partnership is alleged to be one of the parties.
>
> *Chapman* v. *Barney*, 129 U. S. 677, was a relatively early case where it was decided that companies which were not corporations could not be citizens of the United States. In a great many cases this result naturally flowed

from the fact that the particular company or association had no legal personality distinct from the members who composed it. The same principle was, in the United States, held to apply to limited partnerships. *Great Southern Fire Proof Hotel Co.* v. *Jones*, 177 U. S. 456, 457, and citations thereof, and especially *Ralya Market Co.* v. *Armour & Co.*, 102 Fed. 530; 34 Cyc. 1263. In most of the United States the theory that a partnership had no real personality distinct from the members that composed it was applied to limited partnerships.

Even in Iowa where a limited partnership has a distinct legal existence, yet the same doubt arose, probably more especially in this case by reason of the Iowa statute. That State permits suits against firms as an entity or against the individual partners. In *McLaughlin* v. *Hallowell*, 228 U. S. 284, a case from Iowa, after it had been decided that a case was not removable where the limited partnership was one of the parties, the members of the partnership attempted to remedy this condition by appearing personally, but the Supreme Court held that as one of the necessary parties to the suit could never have been sued in the Federal Court on the ground of diversity of citizenship (the partnership having none) the case was not removable. At least, that seems to be the necessary intendment of the opinion, although it was really decided on another jurisdictional point. See also *Ralya Market Co.* v. *Armour & Co.*, supra.

We may assume, then, that in the United States, outside of Louisiana or other States deriving their jurisprudence from the civil law, a limited partnership is never a citizen.

From the case before us one of two things is true, either that the *Sociedad en Comandita* is a limited partnership and hence has no citizenship, or else it is necessarily a citizen of Porto Rico, being incorporated here. Of course, if it has no citizenship, no question of diversity of citizenship could be raised; a proposition, we think, that would be conceded by counsel for the respondent. There can be no diversity of citizenship unless both parties are citizens.

That a *Sociedad en Comandita* has a distinct entity in Porto Rico is a proposition generally conceded. Some of our own cases say so. *Cintron* v. *Colorado*, 22 P.R.R. 541; *Quintana* v. *Ramirez & Co.*,

22 P.R.R. 707. See also Sanchez Roman, 2d. Edicion, volume 11, page 144. To say that an entity organized under the laws of Porto Rico has citizenship distinct from the body politic or territory that organized it would be a startling statement. If Porto Rico has any citizenship, a corporation organized under its laws must necessarily have the same citizenship, and the same would be true of a limited partnership, if that partnership has any citizenship at all. We need not therefore even decide in this case whether a *sociedad en comandita* is or is not a citizen.

The principal contention of the respondent, however, is and must be that the matter of citizenship in this case is to be determined by the partners who form the *Sociedad en Comandita*—several of them the managing partners and several more the contributing partners. We apprehend that this theory is based upon the law in most jurisdictions of the United States that a partnership has no legal existence independently of its members. This is certainly not true in Porto Rico. This court has recently decided that in certain contingencies partners may be joined in a suit against a partnership [5] (*Successors of M. Lamadrid & Co.* v. *Martorell*, 28 P.R.R. 824), but that was a far cry from saying that the partnership was composed of or dependent for its legal existence upon the individual status of its members. **We think that the five or six individual members who form this *Sociedad en Comandita* would be the first to disclaim that they were collectively and individually responsible for all the acts of the *Sociedad en Comandita*. We hold, however, that a *sociedad en comandita* is an entity distinct from the members that compose it.**

In order that a suit may be removed on the ground of the diversity of citizenship there must be, as the word "suit" implies, parties to it, and **it is only the parties to a suit who can petition for removal. The person or entity sued in this case was Russell & Co.**

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[5] This was a *sociedad colectiva*, resembling the common law general partnership.

It was the essential and only party defendant to the suit. Any existing obligation was between The People of Porto Rico and Russell & Co. and these individual members can not change the nature of the obligation by asking to be made parties. It is admitted in the pleadings that Russell & Co. is a *sociedad en comandita*. The defendant here then has no citizenship distinct from The People of Porto Rico or it has no citizenship at all.

People v. *Rivera Zayas, District Judge*, 29 P. R. 423, 428-431.

Although it is not expressly stated anywhere in the opinion last above cited that the *sociedad en comandita* is really a corporation, and although the official English translation thereof, above quoted, represents the Court as having referred to the *sociedad* as a limited partnership, nevertheless it will be noted that the opinion is very emphatic in its declarations that the *sociedad* possesses, under the civil laws of Puerto Rico, complete juridical personality, entirely separate and apart from its individual members.

It should be kept in mind also that the question of the legal character and status of the *sociedad* under the laws of Puerto Rico, *is one of local law*, concerning which the views of the local court of last resort, although of course not binding on this Court, should nevertheless be accorded great weight, and should be left undisturbed unless clearly erroneous.

In *Louisville Railroad Company* v. *Letson*, 2 How. 497 (hereinafter in this petition and the supporting brief for convenience called the *Letson* case), this Court, modifying prior holdings on the subject, adopted the rule, *ever since followed* (*St. Louis and San Francisco Ry. Co.* v. *James*, 161 U. S. 545, 555), that, for federal jurisdictional purposes, the members of a corporation are conclusively presumed to be citizens of the state under whose laws the corporation was created. That rule was definitely predicated upon the distinctive characteristics of the corporation. It was adopted, the Court explained in substance, because the corporation is an artificial person,

created by law, with complete and separate juridical status, with the characteristics of immortality and individuality, and because it is capable of residing in or inhabiting the state under whose laws it was created, and of being treated as a citizen of that state for purposes of federal jurisdiction.

Closing its discussion of this point in the *Letson* case, this Court said (p. 558):

> We confess our inability to reconcile these qualities of a corporation—residence, habitancy, and individuality, with the doctrine that a corporation aggregate cannot be a citizen for the purposes of a suit in the courts of the United States, unless in consequence of a residence of all the corporators being of the state in which the suit is brought. When the corporation exercises its powers in the state which chartered it, that is its residence, and such an averment is sufficient to give the Circuit Courts jurisdiction.

That reasoning applies as fully to the civil law *sociedad en comandita* of Puerto Rico as to the common law private corporation. The *sociedad en comandita* is also an artificial person, created by law, with complete and separate juridical status, with the qualities of immortality or perpetual succession, capable of inhabiting or residing in the territory under whose laws it is created, capable in its own separate name of acting, contracting, doing business, suing and being sued, and thus capable, to exactly the same extent as a corporation, of being treated as a citizen of that territory for federal jurisdictional purposes. Exactly like the stockholders of a corporation, the individual members of the *sociedad en comandita* are either completely exempted from any liability for the acts and debts of the *sociedad*, or have only such strictly limited and subsidiary liability therefor as exists on the part of the stockholders of some classes of corporations. In short, there is no substantial difference, except in name, between a corporation and a *sociedad en comandita*. The latter is merely one kind of corporation. See Appendix IV, *infra*, pp. 78-90.

We have not overlooked *Great Southern Fire Proof Hotel*

Co. v. *Jones*, 177 U. S. 449, wherein this Court declined to extend the rule of the *Letson* case to limited partnerships, nor have we failed to consider the opinion of the United States Circuit Court of Appeals for the First Circuit in *People of Puerto Rico* v. *Fortuna Estates*, 279 Fed. 500, holding (p. 505) "that, where the jurisdiction of a federal court over a suit brought against a partnership depends upon diversity of citizenship, the question is to be determined by the citizenship of its members, whether under the law of the place of its origin it is regarded as an entity and may sue or be sued in its partnership name," and the refusal of this Court, presumably on other grounds,[6] to grant a petition for certiorari in that case (259 U. S. 587).

Our position here is simply that in previous cases involving this question in connection with the *sociedad en comandita*, the courts concerned, except perhaps the Supreme Court of Puerto Rico, have invariably been misled by the error commonly committed in the translation of the Spanish term *sociedad en comandita;* have failed to recognize the fact that the entity thereby designated is to all intents and purposes actually a corporation as above pointed out; and, treating the *sociedad* simply as a limited partnership, have erroneously applied the rule established by this Court in the *Great Southern Fire Proof Hotel Co.* case; whereas the *sociedad en comandita* is really a corporation, and the proper analogy is found in the *Letson* case and the *St. Louis & San Francisco Ry. Co.* case, *supra.*

In its opinion in this case, the Circuit Court of Appeals, as the basis for its holding that the motion to remand was properly denied by the District Court, refers to its own prior

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[6] The Circuit Court of Appeals had held in that case that, on other grounds, the federal court had jurisdiction, viz., that suit had originally been begun against a *New York corporation*, and the subsequent addition of the *sociedad* as an additional defendant, did not oust the jurisdiction, whatever the status of the *sociedad* (279 Fed. at pp. 501, 504).

holdings in *People of Puerto Rico* v. *Fortuna Estates*, above mentioned, and in *Goico* v. *Russell & Co.*, 4 F. (2d) 7, and to the fact that in its opinion in the *Fortuna Estates* case attention was called to the following authorities: *Chapman* v. *Barney*, 129 U. S. 677, 682; *Great Southern Fire Proof Hotel Co.* v. *Jones*, *supra*; *McLauglin Bros.* v. *Hallowell*, 228 U. S. 278; *Bruett & Co.* v. *Austin Drainage Excavator Co.*, 174 Fed. 668; *Columbia Digger Co.* v. *Rector*, 215 Fed. 618; and *Empire Rice Mill Co.* v. *Neumond*, 199 Fed. 800. (R. 98).

But there is not a word in the opinions of the Circuit Court of Appeals in the *Fortuna Estates* case, *supra*, in the *Goico* case, *supra*, or in the present case, to indicate that that Court in any of these cases realized the true nature and legal status of the *sociedad en comadita* as having, not merely some, but all of the substantial characteristics of the private corporation. On the contrary, it is clearly apparent that that Court, in dealing with the *sociedad en comandita* in those cases, regarded that entity as simply a partnership, with perhaps the single corporate capacity of suing and being sued in its corporate name. That such was the understanding of that Court is evidenced, not only by the absence of any reference in those opinions to the complete parallel between the characteristics of the *sociedad en comandita* and those of the private corporation, and the Court's frequent references to the *sociedad en comandita* simply as a "partnership," but even more clearly by the cases cited in the opinion in the *Fortuna Estates* case, *supra*. For, as we shall now proceed to show by brief analyses of those cases, they dealt in every instance either with an ordinary general partnership or else with a limited partnership which was in fact, or was regarded by the Court as, lacking in some of the essential characteristics of a corporation.

Chapman v. *Barney*, 129 U. S. 677. In that case this Court held simply that an allegation that the plaintiff was a "joint stock company" organized under the laws of New York, did not amount to an allegation that the plaintiff was a cor-

poration, but did in effect amount to an allegation that the plaintiff was a "mere partnership"; and, since a mere partnership could not be a citizen, this Court held that that allegation was insufficient to give a federal court jurisdiction of an action between the plaintiff and a citizen of another State by reason of diversity of citizenship. It we are correct in our view that a *sociedad en comandita*, organized under the laws of Puerto Rico, possesses all of the essential characteristics of a corporation, and is in fact a kind of corporation, that case is clearly not in point here, for in that event the defendant here is not a "mere partnership."

Great Southern Fire Proof Hotel Co. v. *Jones*, 177 U. S. 449, hereinafter for convenience called simply the *Hotel Company* case. As has been previously noted, it was in that case that this Court, in 1900, first definitely declared that the rule of the *Letson* case, *supra*, would not be extended to embrace partnership associations. The action had been commenced in a United States Circuit Court in Ohio by "Benjamin F. Jones, George M. Laughlin, Henry A. Laughlin, Jr., Benjamin F. Jones, Jr., doing business under the firm name and style of Jones & Laughlin, Limited", by complaint alleging the plaintiff partnership to have been organized under the Pennsylvania Act of June 2, 1874 (P. L. 1874, pp. 271 *et seq.*; 2 Purdon's Digest, 13th Ed., pp. 2023 *et seq.*), and to be "a citizen of the State of Pennsylvania." The defendants were an Ohio corporation and several Ohio partnerships, and the sole possible ground for federal jurisdiction was diversity of citizenship. Demurrers to the complaint were sustained, and the complaint was dismissed, by the Circuit Court. On appeal, the United States Circuit Court of Appeals for that Circuit reversed the Circuit Court. The case then came before this Court on certiorari obtained by the hotel company.

Thus far the question of jurisdiction had not arisen, and that question was not discussed in the original briefs filed in this Court. It was first raised by members of this Court during the oral argument, March 21 and 22, 1900. Two days later, on March 24, 1900, counsel for the respondents filed

with the Clerk of this Court "supplemental memoranda" of two or three typewritten pages, arguing very briefly that the allegations of the complaint were sufficient to establish jurisdiction, and requesting, in the event this Court should decide otherwise, that the case be remanded to the Circuit Court with leave to amend the complaint. For the convenience of the Court in its consideration of the present case, and to show the inadequacy of the presentation of the jurisdictional question in that case, we have appended a copy of that memorandum (Appendix V, *infra*, pp. 91-93).

On April 9, 1900, this Court, without considering the merits of the case, rendered its opinion, delivered by Mr. Justice HARLAN, reversing the judgments of both lower courts upon the jurisdictional ground alone, and remanding the case with leave to amend the complaint upon the subject of citizenship.

From the opinion of this Court, and the "supplemental memoranda" filed by the respondents, it seems clear that the attention of the Court was not drawn to the specific provisions of the Pensylvania Act of June 2, 1874, under which the plaintiff partnership had been organized, or to the fact that the so-called "limited partnership associations" therein authorized were invested by that act with every essential characteristic of a private corporation. So far as the jurisdictional question there involved was concerned, this was the very fact of most vital importance.

In its opinion in that case, after referring to certain opinions of the Pennsylvania Supreme Court concerning limited partnership associations organized under the laws of that State, namely; (1) *Coal Co.* v. *Rogers*, 108 Penn. St. 147, 150, declaring that "such an association is not technically a corporation, yet it has many of the characteristics of one," and that "it may not be improper to call such an association a *quasi* corporation"; (2) *Hill* v. *Stetler*, 127 Penn. St. 145 (17 Atl. 887), saying that the Pennsylvania Act of June 2, 1874, provided for the creation of "a new artificial person to be called

a joint-stock association, having some of the characteristics of a partnership and some of a corporation"; and (3) *Carter* v. *Producers' Oil Co., Ltd.*, 182 Penn. St. 551, 573, 574 (38 Atl. 571, 572), declining to regard a limited partnership association organized under the Pennsylvania Act above mentioned as a corporation, and holding it to be only a partnership association, although conceding that it has some of the qualities of a corporation, this Court said (177 U. S. 457):

> "That a limited partnership association created under the Pennsylvania statute may be described as a '*quasi* corporation,' having some of the characteristics of a corporation, or as a 'new artificial person,' is not a sufficient reason for regarding it as a corporation within the jurisdictional rules heretofore adverted to. That rule must not be extended. We are unwilling to extend it so as to embrace partnership associations."

From the foregoing it is apparent that, in the *Hotel Company* case, the holding of this Court was that a Pennsylvania limited partnership could not be regarded as equivalent to a corporation, and therefore could not be regarded as a citizen of that State, for federal jurisdictional purposes; and it is further apparent that such holding was based very largely, if not wholly, upon the fragmentary remarks of the Pennsylvania Supreme Court above quoted, from which this Court seems to have concluded that such partnerships had only a part, and not all, of the characteristics of a corporation. Apparently this Court did not during its consideration of that case closely examine the Pennsylvania statute above mentioned to determine for itself independently the legal characteristics of the partnership associations created thereunder, or whether those characteristics included all of those which, in the case of corporations, constituted the ground upon which this Court had adopted the rule announced in the *Letson case;* but, in view of the very inadequate—and even acquiescent—presentation of the question in the "supplemental memoranda" for the respondents there (Appendix V, *infra*, pp. 91-93), this

Court was led to accept the comments of the Pennsylvania court quoted in its opinion as decisive of those questions.

Examination of the opinions in which those comments appear will disclose that in not one of them was the question at issue whether Pennsylvania partnership associations possessed all, or only part, of the characteristics of a corporation.

One of those cases was *Coal Co.* v. *Rogers, supra,* 108 Penn. St. 147, 150, which was an action for trespass against a Pennsylvania limited partnership organized under the act of 1874. The treble damages trespass statute of Pennsylvania was applicable only to "any person or corporation," and the question involved in that case was whether the defendant came within the application of those terms as employed in that statute. The state court in effect held the partnership to be an "artificial person" and therefore within the statute. The Court had no occasion in that case to decide, and did not decide, whether such an association possessed all or only part of the characteristics of a corporation, and its remarks in that connection, quoted by this Court in the *Hotel Company* case, were obviously never intended by their authors, or that Court, as a holding that such an association did not possess all of the legal characteristics of a corporation.

Another of the cases cited by this Court in the *Hotel Company* case was *Hill* v. *Stetler, supra,* 127 Penn. St. 145, 17 Atl. 887. In that case the question before the state court was whether an alleged limited partnership, by reason of irregularities in its organization, was in reality only a general partnership, so as to render its members individually liable as general partners for the partnership debts. The Court's remark in that case to the effect that the joint-stock associations created under the Pennsylvania Act of 1874, *supra,* had "some of the characteristics of a partnership and some of a corporation," occurs in the first part of the opinion, prior to the discussion of the merits, and was apparently intended as merely introductory or generally descriptive, and was, so far as any issue in that case was concerned, pure *dictum.* There is nothing in that case to indicate that

the state court there had any occasion to, or that it did, carefully consider whether the so-called joint-stock companies or limited partnerships there under consideration possessed all, or only a part, of the legal characteristics of corporations.

The other Pennsylvania case cited in the opinion of this Court in the *Hotel Company* case is *Carter* v. *Producers' Oil* Co., Ltd., *supra,* 182 Penn. St. 551, 38 Atl. 571. As clearly appears from the discussion in the opinion of this Court in the *Hotel Company* case (177 U. S. 457), the question before the Pennsylvania Supreme Court in the *Carter* case was simply whether the limited partnership associations of that State, organized under the act above mentioned, were actually corporations within the meaning of the corporation laws of that State, so that those associations could adopt only such by-laws, rules and regulations as it was within the power of a corporation to prescribe. The state court held they were not, but that decision did not involve a holding that those associations did not possess all of the essential corporate characteristics in consideration whereof this Court adopted its jurisdictional rule announced in the *Letson* case, *supra.*

Thus it appears that this Court, in the *Hotel Company* case, under the disadvantages of an inadequate presentation by counsel of the jurisdictional question there involved, influenced by incidental and fragmentary remarks, largely *obiter dicta,* quoted from three prior opinions of the Pennsylvania Supreme Court, and apparently without an independent examination of the Pennsylvania statutes on the subject, concluded that the so-called limited partnership associations of that State did not have all of those characteristics necessary to constitute them "citizens" of Pennsylvania for federal jurisdictional purposes, within the principle of the *Letson* case. That conclusion was clearly erroneous. Examination of the Pennsylvania Act of June 2, 1874, *supra,* will prove that the limited partnership associations thereby authorized, do really possess every one of those corporate characteristics considered by this Court as the basis for the

rule laid down in the *Letson* case. Those characteristics are (2 How. 557, 558):

(1) Complete juridical personality, that is, existence as a distinct and separate artificial person, created and organized by authority of law, with legal capacity in its own name to act, contract, transact business, sue and be sued; and "for the purposes of its incorporation, capable of being treated as a citizen";

(2) Possession of "only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence," including "immortality" and "individuality," enabling it to "manage its own affairs, to hold property without the perplexing intricacies, the hazards and the endless necessity of perpetual conveyances";

(3) Legal capacity to act and be treated as an inhabitant or resident of the state or territory under whose laws it is organized, and where it exercises its powers; and, doubtless also, although it is not expressly so indicated in the *Letson* case;

(4) Legal capacity to contract indebtedness without imposing any liability, or only a contingent or limited liability, as may be provided by law, upon its individual members.

All of those characteristics, as well as other distinctive characteristics, of corporations were expressly conferred by the Pennsylvania Act of 1874, *supra*, upon the so-called "joint-stock companies," or "limited partnership associations," whose creation was thereby authorized. The whole act so closely parallels the various statutes of states and territories governing the creation and organization of private corporations, as to leave absolutely no substantial or real difference in characteristics between the Pennsylvania so-called "limited partnership association" with which this Court was dealing in the *Hotel Company* case, and the private corporation which was held by this Court in the *Letson* case to be entitled to recognition, for jurisdictional purposes, as a citizen of the state of its organization. Had that fact been clearly brought out and

presented by counsel in the *Hotel Company* case, we are confident that this Court would have there applied the rule of the *Letson* case, and would have held the so-called "limited partnership association" there involved to be a citizen of Pennsylvania for federal jurisdictional purposes.

In other words, when this Court, in the *Hotel Company* case, referring to the rule of the *Letson* case, declared in substance that it must not and would not be extended to partnership associations, we are sure it did so because of a misapprehension that the Pennsylvania "limited partnership association" there involved had only some, but not all, of the essential corporate characteristics mentioned in the *Letson* case; whereas the fact really was that it had them all. The only tangible difference between the two entities, that is, between the ordinary private corporation and the Pennsylvania so-called "limited partnership association," as far as present questions are concerned, was the difference in the generic names by which they were designated in their respective organic statutes. The so-called "limited partnership association," like the corporation, was an artificial person, created by law, and by law invested with complete juridic personality, capable in its own name, independently of its members, of acting, contracting, doing business, suing and being sued. Like the corporation it functioned through directors, managers or agents, originally designated in its organic document, and thereafter elected by its members. Like corporation stockholders, its members were held to no individual liability, or only a limited and contingent liability, for acts or debts of the organization, and could influence the actions of the organization only through exercise of their right to vote in the selection of its managing officers or agents. In short, the so-called "limited partnership association" was really a corporate body, identical in all substantial characteristics with the corporation, and different only in the minor particular of generic statutory name.

Had this fact been clearly presented to and understood

by this Court in the *Hotel Company* case, is it conceivable that this Court would have adopted the view it there took, and declined to apply in that case the rule of the *Letson* case, upon the sole ground that the Pennsylvania "limited partnership association" although invested with every essential corporate characteristic, was not expressly labeled "corporation" in its organic statute? When this Court there said "we are unwilling to extend it" (the *Letson* case rule) "so as to embrace partnership associations," was that language intended, or should it now be construed, to refer to corporate entities called "limited partnership associations," but in reality legally invested with every essential characteristic of corporations?

Those questions answer themselves in the negative. There is no logical ground upon which affirmative answers thereto could be supported. Affirmative answers would, in effect, make the opinion in the *Hotel Company* case say that a corporation, because it possesses complete juridical personality, is for federal jurisdictional purposes a citizen of the state of its organization; but so-called limited partnership associations, even when invested by law with the same characteristics as corporations including complete juridical personality, are not such citizens. We cannot believe that this Court ever intended to say any such thing—to rest so important and vital a distinction upon a mere difference of statutory designation. This Court does not allow mere matters of form to control its decisions, or, in its reasoning, permit the substance of things to give way to their shadows. It does not recognize a distinction where there is no real difference.

Proceeding with our analyses of the authorities cited by the Circuit Court of Appeals in its opinions in this case and the *Fortuna Estates* case, *supra*, we note next the case of *McLaughlin* v. *Hallowell*, 228 U. S. 278. The jurisdictional question in that case arose with relation to an ordinary general partnership of the State of Iowa. The State law expressly provided (Iowa Code, 1897, sec. 3468) that "Actions may be brought by or against a partnership as such, or against all or

either of the individual members thereof." The suit had been commenced in a state district court against the partnership alone. Upon petition of the individual partners it had been removed to a United States District Court, but the latter had remanded it to the state court. When the case came to this Court on writ of error to the Iowa Supreme Court, all that this Court did with relation to that particular question was to follow its own prior holdings that an order of remand was not reviewable here. The case had absolutely no bearing on the question before the Circuit Court of Appeals in the *Fortuna Estates* case, now raised again in the present case, because this question relates to the *sociedad en comandita*, an artificial personality with all of the essential characteristics of a corporation.

Bruett & Co. v. *Austin Drainage Excavator Co.*, 174 Fed. 668. In that case a United States District Court in Iowa held that an action begun in a state court by an Iowa partnership against an Illinois corporation was removable on the petition of the defendant alleging the members of the partnership to be citizens of Iowa. The case is not in point here, and was not in point where it was cited by the Circuit Court of Appeals in the *Fortuna Estates* case, *supra*, because the partnership plaintiff in that case was an ordinary general partnership, possessing as its sole corporate characteristic merely the capacity to sue and be sued under its partnership name. The statute also authorized the individual partners to be joined in actions by or against the partnership and the District Court very properly held in substance that, notwithstanding the Iowa statute allowing the partnership to sue and be sued in its partnership name, the individuals composing the partnership continued to be real parties in interest, and their citizenship was therefore the determining factor in questions of federal jurisdiction. As we have clearly shown, the Puerto Rican *sociedad en comandita* possesses not merely one, but all, of the characteristics of a corporation, and its members are no more proper parties to actions by or against the *sociedad* than

are the stockholders of a corporation in actions by or against the corporation.

In *Columbia Digger Co.* v. *Rector*, 215 Fed. 618, again we find that the partnership defendant concerning which the question of federal jurisdiction arose was an ordinary general partnership, apparently without a single one of the essential characteristics of a corporation. The United States District Court, in that case, rightly held its jurisdiction to be dependent upon affirmative showing of the citizenship of the individual members of the partnership, as long as the partnership continued to be a party to the action. For the reasons already pointed out in our discussion of other cases involving general partnerships, the case is not in point here, where the question arises in connection with the *sociedad en comandita*, a very different entity.

In *Empire Rice Mill Co.* v. *Neumond*, 199 Fed. 800, the action had been commenced in the United States District Court for the Eastern District of Louisiana, by a Louisiana corporation as plaintiff, against a commercial partnership consisting of two members, both of the latter being citizens of Germany. It was a suit on contract for a money judgment, and the prayer was for judgment *in solido* against the firm and its members individually. The Court, although conceding that a partnership in Louisiana was considered a legal entity, pointed out that, except in one early decision not regarded as persuasive, such a partnership had never been considered a corporation, or even a *quasi* corporation, and further that under the Louisiana law the partners could be joined in a suit by or against the partnership, and "judgment rendered against the firm and the partners *in solido*" (p. 803). **This is not true of the Puerto Rican *sociedad en comandita*, with which we are concerned in the present case,** for the Supreme Court of Puerto Rico has ruled in effect that the individual members of the *sociedad en comandita* have no standing as parties in actions by or against that entity. *People* v. *Rivera Zayas*, 29 P. R. 423, 431, *supra*, pp. 21-24.

This completes our analyses of the authorities cited by the Circuit Court of Appeals in its opinion in the *Fortuna Estates* case, *supra,* and again mentioned in its opinion in the present case (R. 98). As we stated at the outset of our discussion of these cases, it is clear that not one of them provides any authority whatever in support of the holding of that Court upon the jurisdictional question under discussion. In fact their citation tends to show that the Circuit Court of Appeals did not fully grasp the real question presented in that connection, which was not merely whether the rule in the *Letson* case could be applied to partnership associations or ordinary limited partnerships, but whether the Puerto Rican *sociedad en comandita* is not really for jurisdictional purposes a corporation. That Court, obviously without any careful examination of the legal characteristics of the *sociedad en comandita,* and apparently assuming that it was only the ordinary limited partnership association, invested with some, but not all, of the characteristics of a corporation, erroneously applied the partnership rule of the *Hotel Company* case, whereas, as we have shown, the actual facts call for the application of the corporation rule of the *Letson* case.

It is possible that respondent may argue that even if it should be held that there was no diversity of citizenship, nevertheless the trial court had jurisdiction of the case under Section 24 of the Judicial Code (*supra,* p. 5), because of the federal questions raised in the answer. Such an argument would be wholly untenable. No federal question was apparent on the face of the complaint (R. 87-91). The petition for removal set forth no ground for removal except alleged diversity of citizenship (R. 6-10), and even if that petition had set forth the federal questions subsequently disclosed by the answer, this would not have sufficed to give the federal court jurisdiction upon that ground. To invest the federal court with jurisdiction under existing laws on the ground that the action is one arising under the constitution or laws of the United States, it is vitally essential that the c*omplaint itself* show a federal question. No action or pleading of the defense can sup-

ply the lack of such showing. *Tennessee* v. *Bank of Commerce*, 152 U. S. 454, 458-464; *Chappell* v. *Waterworth*, 155 U. S. 102, 107-108; *Louisville & Nashville R.R.* v. *Mottley*, 211 U. S. 149, 152-154; *Great Northern Ry. Co.* v. *Alexander*, 246 U. S. 276, 280-282.

As suggested in the foregoing petition it will seem to the people of Puerto Rico generally a strange perversion of justice if this respondent *sociedad*, owning rich properties and carrying on extensive agricultural, industrial and commercial affairs in the Island of Puerto Rico, organized under and protected by its laws, in fact owing its very existence to those laws and possessing all of the essential characteristics of a corporation, is permitted completely to evade the jurisdiction of the insular courts whenever engaged in litigation with the government or with a citizen of Puerto Rico.

POINT II

BY ASSESSING THE LANDS IN QUESTION FOR A PRO RATA SHARE OF THE COSTS OF MAINTAINING AND OPERATING THE SYSTEM FROM WHICH THEY ARE IRRIGATED, ACT NO. 49 OF 1921 DOES NOT IMPAIR THE OBLIGATIONS OF THE CONTRACTS OF AUGUST 26, 1914, BECAUSE THE CONTRACTS CONTAIN NO PROVISION EXEMPTING THOSE LANDS FROM TAXATION, BECAUSE SUCH EXEMPTION CANNOT BE PRESUMED, AND BECAUSE IN THE ABSENCE OF SUCH EXEMPTION THE ACT IS CLEARLY WITHIN THE LEGISLATIVE POWERS OF THE INSULAR LEGISLATURE.

A.—The People of Puerto Rico has no quarrel with the general principles cited by the Circuit Court of Appeals on page 11 of its opinion (R. 103), namely that a state cannot impair the obligations of its own contracts, and that this rule constitutes a limitation upon the power of taxation as well as upon other powers. Your petitioner recognizes the soundness and force of those principles wherever they are applicable, and is more than willing that its actions under review in this case, as well as in all other connections, shall be judged according to the standard suggested in the opinion of this court in *Woodruff* v. *Trapnall*, 10 How. 190, 207; that

is, "to be characterized by a more scrupulous regard for justice and a higher morality than belong to the ordinary transactions of individuals."

The People of Puerto Rico cannot justly be charged with any selfish interest whatever in the result of this controversy. The assessments in question, if and when collected, will simply accrue to the special fund for the operation and maintenance of the irrigation district, and thus serve only to lower the assessments upon other lands now taxed for such operation and maintenance. The insular treasury can derive no direct benefit. It is mainly on behalf of the farmers of the Southern Coast Public Irrigation District, and in the hope of securing justice for them, that The People of Puerto Rico has sought by the act in question, and is seeking by this action, to compel the defendant *sociedad* to pay its fair and reasonable share of the cost of operating and maintaining the system.

The position of the insular Government with relation to the present point is that the tax imposed by Act No. 49 does not impair the obligations of the contracts of August 26, 1914, because the Government in those contracts did not agree not to tax the water rights therein granted to the predecessors in interest of the present defendant. Neither of the contracts contains any limitation whatever upon the power of taxation of the insular Government; nor does the Act of August 8, 1913, under which they were made. Even if the contracts had contained such an undertaking it would have been illegal and void, because wholly unauthorized by the enabling statute.

B.—Nor could such an undertaking by the Government be inferred or implied, because of the well settled principle that the taxing power of a government is never presumed to be relinquished, and continues to exist with relation to property or rights granted by the government unless the contrary intention is declared in clear and unambiguous terms. *Society for Savings* v. *Coite*, 6 Wall. 594, 606; *Metropolitan Street Ry. Co.* v. *New York*, 199 U. S. 1, 35-46. And even in cases where a state has granted rights to private persons with ex-

press provision of exemption from future taxation, if the circumstances do not amount to a contract to that effect upon some valuable consideration, it has uniformly been held by this Court that the state has the right to terminate the exemption. *Stanislaus County* v. *San Joaquin C. & I. Co.*, 192 U. S. 201, 206-213, and the cases therein cited.

It will hardly be contended that the original concessions granted by the Spanish Government to the predecessors in interest of the defendant *sociedad* were not subject to taxation by the insular Government. The contracts of August 26, 1914, constituted merely an agreement on the part of the Government that the holders of those concessions should receive from this irrigation system certain amounts of water agreed to be equivalent in value to those which they had been entitled to take under their concessions. *What was there in those contracts or in the circumstances under which they were made to justify any inference that the rights granted by the contracts were to be forever tax free? Why should the Government have given tax-exempt water rights in exchange for taxable water rights? Where was the consideration moving to the Government, or to the land owners of the irrigation district, sufficient to justify the perpetual release of the concession holders from any assessment whatever toward the cost of maintaining service from which they were to be supplied? There was none. The concession holders simply exchanged taxable rights under their original concessions for rights equally taxable under the contracts.*

Apparently the Circuit Court of Appeals, in its opinion concerning this phase of the controversy, was influenced to some degree by an assumption that the People of Puerto Rico would have been unable to go ahead with the operation of the South Coast Irrigation District at all, if they had not been able to agree with the concession holders on a surrender of the concessions in exchange for equivalent water from the system. But this is not a fair assumption from the record of this case. There is nothing to indicate that had the Govern-

ment so elected it could not have modified the Jacaguas part of the plan so as to permit enough water to continue in the course of the river to provide these concession holders with the full amounts allowed by their concessions, while using the remainder, supplemented by the waters drawn through the tunnel from the Toro Negro River, and perhaps other waters from other sources, for the desired development in that valley. The recitals in the contracts appear to indicate that the Government was prepared to do so: "is ready to deliver * * * the amount of water * * * but in order to facilitate * * * ." (R. 35, 51).

That court also stresses the fact that the so-called equivalent rights allowed the concession holders under the contracts called for only about 75 per centum of the aggregate number of acre feet allowed under the original concessions. But this difference was fully compensated by advantages realized by the concessionaires in the way of daily deliveries, at higher intakes, enhanced assurance of continuity, etc. In any event, it surely cannot logically be argued that the surrender of 25 per centum of the total annual volume of water allowed under their original concessions was a sufficient consideration moving from these concession holders to the Government for a perpetual exemption from taxation of the rights granted by the contracts; and there is no statement in the contracts (R. 33-48, 49-61) that it was so intended.

C.—In support of its holding that Act No. 49 impairs the obligations of the contracts of August 26, 1914, the Circuit Court of Appeals in its opinion (R. 103) quotes from *Murray* v. *Charleston*, 96 U. S. 432, to the effect that a state or municipality may not under the guise of levying taxes impair the obligation of a contract. In that case the City of Charleston, Virginia, in order to raise money for municipal purposes had issued and sold obligations bearing interest at 6 per centum per annum. Subsequently the city had levied a tax of 2 per centum on all real and personal property in the city, and the city authorities had attempted to collect this tax on

certain of the city obligations owned by a resident of Germany by deducting the amount of the tax from payments of interest due from the city to the holder of the obligations. *It was not the tax on the obligations which was held to be an impairment of the contract in that case, but it was the attempt by the city to collect that tax by means of a deduction thereof from interest payments that was held to constitute the impairment*; and this Court there said, among other things (p. 445):

> Is, then, property, which consists in the promise of a State, or of a municipality of a State, beyond the reach of taxation? We do not affirm that it is. A State may undoubtedly tax any of its creditors within its jurisdiction for the debt due to him, and regulate the amount of the tax by the rate of interest the debt bears, if its promise be left unchanged. A tax thus laid impairs no obligation assumed. It leaves the contract untouched. But until payment of the debt or interest has been made, as stipulated, we think no act of State sovereignty can work an exoneration from what has been promised to the creditor; namely, payment to him, without a violation of the Constitution. "The true rule of every case of property founded on contract with the government is this: It must first be reduced into possession, and then it will become subject, in common with other similar property, to the right of the government to raise contributions upon it."

In short, in the case last above mentioned, had the city fully complied with its contract by paying the full amount of the required interest, and had the owner of the municipal obligations in question been a resident of the city, the city might lawfully have proceeded against such owner, together with the other owners of real and personal property within the city, for the collection of the tax, and there would have been no impairment of the obligation of the contract in a constitutional sense. In the present case the insular Government is withholding nothing from the respondent *sociedad* to which it is entitled under the contracts in question. The respondent

sociedad and its predecessors in interest have been receiving all of the water called for by the contracts, and the insular Government is neither withholding nor proposing to withhold a single drop of it. The contracts here continue to be scrupulously fulfilled, and the Act of 1921 does not militate against such fulfillment. It must be obvious therefore that the case of *Murray* v. *Charleston* affords no basis whatever for a holding in this case that the Act here in question impairs the obligations of the 1914 contracts in a constitutional sense.

An interesting and authoritative discussion of some of the principles involved in this connection will be found in the case of *Metropolitan Street Ry. Co.* v. *New York*, 199 U. S. 1, *supra*. The street railway company under its charter was required to pay certain percentages of its gross receipts into the municipal treasury each year. Subsequently the Legislature of New York amended the state tax laws so as to make subject to general taxation all railway franchises, providing that where the companies were already paying a percentage of gross receipts, such payments should be deducted from their assessments. The railway company contested the validity of this statute upon the ground, among others, that it impaired the obligation of the contract embodied in its charter, by requiring the company to make payments in excess of those required by the charter. This Court affirmed a judgment of the Supreme Court of New York entered pursuant to the decision of the New York Court of Appeals (p. 5; and cf. 174 N. Y. 417) sustaining the validity of the statute upon the ground that the charter contained no clear and unequivocal exemption of the franchise from taxation, that the surrender of the taxing power is never to be presumed, and that therefore the increased tax involved no impairment of the charter contract. We quote from the opinion of this Court in that case as follows (199 U. S. at pp. 35-38):

> The main contention is that this tax legislation impairs the obligation of contracts. It must be borne in

mind that presumptively all property within the territorial limits of a State is subject to its taxing power. Whoever insists that any particular property is not so subject has the burden of proof and must make it entirely clear that, by contract or otherwise, the property is beyond its reach. In *Providence Bank* v. *Billings,* 4 Pet. 514, Mr. Chief Justice Marshall, in delivering the opinion of the court, said (p. 561):

"That the taxing power is of vital importance; that it is essential to the existence of government; are truths which it cannot be necessary to reaffirm. They are acknowledged and asserted by all. It would seem that the relinquishment of such a power is never to be assumed. We will not say that a State may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it may not exist; but as the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear."

In *Vicksburg &c. R. R. Co.* v. *Dennis,* 116 U. S. 665, Mr. Justice Gray cited many authorities, quoting the different phraseology in which by the several writers of the opinions the same rule was announced. In *Wells* v. *Savannah,* 181 U. S. 531, the law was thus stated by Mr. Justice Peckham (p. 539):

"The payment of taxes on account of property otherwise liable to taxation can only be avoided by clear proof of a valid contract of exemption from such payment and the validity of such contract presupposes a good consideration therefor. If the property be in its nature taxable the contract exempting it from taxation must, as we have said, be clearly proved. It will not be inferred from facts which do not lead irresistibly and necessarily to the existence of the contract. The facts proved must show either a contract expressed in terms, or else it must be implied from facts which leave no room for doubt that such was the intention of the parties and that a valid consideration existed for the contract. If there be any doubt on these matters, the contract has not been proven and the exemption does not exist."

In *Chicago Theological Seminary* v. *Illinois,* 188 U. S. 662, the same Justice declared (p. 672):

"The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

See also *Erie Ry. Co.* v. *Pennsylvania,* 21 Wall. 492; *Wilmington & Weldon R. R. Co.* v. *Alsbrook,* 146 U. S. 279; *Ford* v. *Delta & Pine Land Co.,* 164 U. S. 662.

This rule is akin to, if not part of, the broad proposition, now universally accepted, that in grants from the public nothing passes by implication. As said by Mr. Chief Justice Taney, in *Charles River Bridge* v. *Warren Bridge,* 11 Pet. 420, 549:

"The inquiry, then, is, does the charter contain such a contract on the part of the State? Is there any such stipulation to be found in that instrument? It must be admitted on all hands that there is none; no words that even relate to another bridge, or to the diminution of their tolls, or to the line of travel. If a contract on that subject can be gathered from the charter, it must be by implication, and cannot be found in the words used. Can such an agreement be implied? The rule of construction before stated is an answer to the question. In charters of this description, no rights are taken from the public or given to the corporation, beyond those which the words of the charter, by their natural and proper construction, purport to convey. There are no words which import such a contract as the plaintiffs in error contend for, and none can be implied."

Applying these well-established rules to the several contracts, it will be perceived that there was no express relinquishment of the right of taxation. The plaintiff in error must rely upon some implication and not upon any direct stipulation. In each contract there was a grant of privileges, but the grant was specifically of privileges in respect to the construction, operation, and maintenance of a street railroad. These were all that in terms were granted. As consideration for this grant the grantees were to pay something, and such payment is nowhere said to be in lieu of or as an equivalent or substitute for taxes. All that can be extracted from the language used was a grant of privileges and a payment therefor. Other words must be written into the contract before there can be found any relinquishment of the power of taxation.

The Circuit Court of Appeals in its opinion of June 27, 1932, says (R. 103):

> It seems to us that this act amounts to saying that in the future Fortuna Estates' right to receive the water which The People of Porto Rico contracted to deliver to them in substitution for their old water rights and concessions shall be subject to their paying the taxes in question and impairs the obligation of The People of Porto Rico to furnish to Fortuna Estates water which the former agreed to deliver the latter.

But did The People of Puerto Rico agree to make that delivery forever tax free? If so, where is that agreement set forth? If not, where is the impairment?

The theory of the insular Government is that each of the plantations of the respondent *sociedad* supplied with water from the South Coast Irrigation System, is benefited specially by the maintenance and operation of that system, at least to the amount of its *pro rata* share of the annual cost of maintaining the service; that the fact that the contracts of 1914 specify the amounts of water these plantations are entitled to receive from the system, and the fact that the Government agreed to deliver those amounts in lieu of the amounts which the plantations were entitled to take from the river under the old concessions, does not alter the fact that the plantations are so benefited by the improvement; that the plantations are therefore properly chargeable, by special assessment, as provided in the Act, with their *pro rata* share of such maintenance cost.

Against this theory it has been urged in behalf of the respondent *sociedad* that the only benefits accruing to the plantations from the maintenance of the irrigation system are those expressly stipulated in the contracts, for which it is claimed full payment has already been made by the temporary and conditional surrender of rights under the original water concessions. But the Government regards the question whether the lands in question are specially benefited by the development and maintenance of the irrigation system, other-

wise than by the mere delivery of the amount of water stipulated in the contracts, as one for determination by the insular Legislature in its discretion, and one which that Legislature has in effect determined by the Act of 1921.

In other words, the insular Government regards the Act of 1921 as constituting in effect a declaration by the Legislature that the lands therein taxed are specially benefited by the operation and maintenance of the irrigation system, at least to the extent of the taxes levied thereon by that Act, and regards this determination as one which it was within the power of the Legislature to make, and one which the courts will not disturb, at least in the absence of some showing that it is arbitrary and oppressive.

The principles last above mentioned are clearly enunciated by this Court in the case of *Spencer* v. *Merchant*, 125 U. S. 345.

That case involved special assessments, amounting in the aggregate to about $100,000, for a street improvement in Kings County, New York. After the improvement had been completed, and the assessments had been levied upon abutting property, and while there still remained unpaid of these assessments about $40,000 upon various tracts, the whole proceeding was declared invalid by the courts as to those who had not paid. Thereafter the Legislature of New York passed an act directing the Board of Supervisors of Kings County to levy an assessment upon the lands abutting on said improvement which had escaped assessment by reason of the invalidity of the prior proceeding, to the exact amount of the aggregate balance remaining unpaid with interest. The land owners objected upon the ground, among others, that the second act amounted to an attempt to levy a special assessment without regard to the benefits to the lands assessed. The validity of the act was sustained by the New York Court of Appeals (100 N. Y. 585), and by this Court, which said (125 U. S. at pp. 352-353):

The substance of the former decisions, and the grounds of the judgment sought to be reviewed, can hardly be more compactly or forcibly stated than they have been by Judge Finch in delivering the opinion of the Court of Appeals, as follows:

"The act of 1881 determines absolutely and conclusively the amount of tax to be raised, and the property to be assessed and upon which it is to be apportioned. Each of these things was within the power of the legislature, whose action cannot be reviewed in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. * * * The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but it is not bound to do so, and may settle both questions for itself; and when it does so, its action is necessarily conclusive and beyond review. Here an improvement has been ordered and made, the expense of which might justly have been imposed upon adjacent property benefited by the change. By the Act of 1881, the legislature imposes the unpaid portion of the cost and expense, with the interest thereon, upon that portion of the property benefited which has thus far borne none of the burden. In so doing, it necessarily determines two things, viz., the amount to be realized, and the property specially benefited by the expenditure of that amount. The lands might have been benefited by the improvement, and so the legislative determination that they were, and to what amount or proportion of the cost, even if it may have been mistakenly unjust, is not open to our review. The question of special benefit and the property to which it extends is of necessity a question of fact, and when the legislature determines it in a case within its general power, its decision must of course be final. We can see in the determination reached possible sources of error and perhaps even of injustice, but we are not at liberty to say that the tax on the property covered by the law of 1881 was imposed without reference to special benefits. The legislature practically determined that the lands described in that act were peculiarly benefited by the improvement to a certain specified amount which constituted a just proportion of the whole cost and expense, and while it may be that the process by which the result was reached was not the best obtain-

able, and some other might have been more accurate and just, we cannot for that reason question an enactment within the general legislative power."

See also *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 174-178; the latter case citing with approval and following *Spencer* v. *Merchant*, *supra*.

POINT III

IN PROVIDING THAT THE AGGREGATE AMOUNT OF THE ANNUAL LEVY SHALL BE BASED IN PART UPON AN ESTIMATE BY THE COMMISSIONER OF THE INTERIOR OF THE AMOUNT REQUIRED TO DEFRAY THE COST OF OPERATION AND MAINTENANCE OF THE IRRIGATION SYSTEM DURING THE FOLLOWING FISCAL YEAR, ACT NO. 49 DOES NOT DELEGATE LEGISLATIVE POWER TO ADMINISTRATIVE OFFICIALS.

A.—Here again the appellant has no fault to find with the general principles advanced by the Circuit Court of Appeals as the ground for its opinion that the Act delegates legislative power to administrative officials. There is no doubt whatever that the power of taxation is a legislative power which cannot be delegated to administrative or executive officials. It is true also that in a general sense the fixing of the amount of a tax levy is part of the legislative functions involved in the process of taxation. But the fixing of the amount of the levy according to this principle does not necessarily nor usually imply the precise determination and specification of the exact sum to be raised. *The condition is met if the law sufficiently indicates the rules and data to govern determination of the exact amount so as to leave to executive officials substantially nothing more than the finding of facts and the making of mathematical computations.* This, we think, is all that is done by Act No. 49 of 1921, if the Act is properly interpreted according to its purpose and intent.

When Act No. 49 was enacted in 1921, the irrigation system to which it refers had been in existence and operating for more than six years. At that time it was and ever since has been a well-defined entity whose nature, extent, organization,

operating crew and condition were and are firmly established and well known. The function of determining annually in advance the approximate reasonable and necessary cost of maintaining and operating the system for each succeeding fiscal year was and is, therefore, mainly administrative, involving no legislative discretion, but merely the ascertainment of the facts of previous experience and existing conditions, itemized computations of the amounts and costs of labor and material needed for the following year, and the final summing up of items to find the approximate aggregate amount needed. It seems obvious that the Legislature could not reasonably be expected to concern itself with detailed minutiae to the extent necessary to formulate the required estimate for each year, and that when it turned the detailed computations over to the Commissioner of the Interior in the manner provided by the Act it adopted a very reasonable and proper solution of the problem, and one which is in harmony with the almost universal practice throughout the United States in dealing with similar problems.

It must be noted in this connection that the Legislature provided in the same enactment a more or less automatic check against the possibility of excessive levies by prescribing that any surplus realized in the experience of the preceding year must be deducted in computing the levy for the following year. It should also be noted that the Act in effect forbids inclusion in the estimate of any expense for new construction, by providing that the estimate shall include only "expense of maintaining and operating." Interpreted according to the rules of statutory construction the words last quoted must be taken to mean only the expenses of maintenance and operation that are necessary and reasonable.

These are all general limitations upon the authority delegated by the Act to the insular Treasurer and the Commissioner of the Interior. Their joint effect is to leave to those officials very little, if anything, more than the mere finding of facts and mathematical computations. In the required esti-

mate, to which objection has been made, the Commissioner of the Interior can include only necessary and reasonable items of cost of maintaining and operating an existing plant. If these limitations are exceeded the taxpayer can assert his rights and obtain correction of the assessment by appeal to the insular Board of Review and Equalization under Sections 308 and 310 of the insular Political Code (Compilation of the Revised Statutes and Codes of Puerto Rico in force on March 9, 1911, Sections 2960 and 2962).

B.—The authorities cited by the Circuit Court of Appeals in its opinion (R. 105) with relation to this phase of the case, all pertain to the principles governing general taxation. Special assessments, although imposed under the taxing power of the Government, are governed by principles different in various particulars from those which affect general taxation. *Cooley on Taxation*, 4th Ed., Vol. 1, Sec. 31. In the case of a general tax it is usually practicable for the legislative authority to fix precisely either the aggregate amount to be raised by the tax and thus indirectly the rate of taxation, or to fix directly the rate of taxation, thus indirectly establishing the aggregate amount to be levied. In the case of special assessments for local improvements directed by statute or ordinance, it is rarely practicable to determine precisely in the statute or ordinance directing the improvement and authorizing the levy the precise amount to be raised or the rate of apportionment. In such cases the almost universal practice throughout the United States has always been to delegate the function of fixing these exact figures to commissions, boards and administrative officials.

Taxation by Assessment, Page and Jones, Vol. 1, Sec. 267, and cases cited.
Fallbrook Irrigation District v. *Bradley*, 164 U. S. 112, 151, *et seq.*
Lombard v. *West Chicago Park Com.*, 181 U. S. 33.
French v. *Barber Asphalt Paving Co.*, 181 U. S. 324.
Wagner v. *Baltimore*, 239 U. S. 207, 211, *et seq.*

Milheim v. *Moffat Tunnel Dist.*, 262 U. S. 710.
Kansas City Ry. v. *Road District*, 266 U. S. 379.

Each of the cases last above cited involves a statute or ordinance providing for special assessments for the cost of local improvements where the precise amount to be levied was left for determination by administrative action under general limitations. In each of those cases the validity of the statute or ordinance in question was sustained, and, although it does not appear that in any of them the statute or ordinance was attacked on the specific ground that it delegated legislative authority to administrative officials, the absence of any such attack or even discussion of such a question in the opinions in those cases tends strongly to support the conclusion that the statutes and ordinances there involved were not regarded either by the attacking parties, or by the courts, as subject to objection on the ground of improper delegation of legislative authority.

The list of authorities last above cited might be extended almost indefinitely by taking cases decided by the courts of last resort in the various states. The practice is so well settled and of such long standing that we do not deem it necessary in this brief to extend the discussion on this point beyond what has already been said, further than to note the attitude of one of the state appellate courts, as disclosed in the cases next mentioned.

In *Mayor, etc., of Baltimore* v. *State*, 15 Md. 376, 74 Am. Dec. 572, the Supreme Court of Maryland was called upon to decide the validity of an act of that State conferring upon a board of police commissioners authority to estimate what sum of money would be necessary to enable them to discharge the duties imposed upon them, and obliging the mayor and city council to raise, by assessment and levy upon assessable property of the city, the sum thus estimated by the board. It was urged that this statute constituted an improper delegation of legislative authority, but the court up-

held the validity of the statute against this attack and said (15 Md. at pp. 467-468; 74 Am. Dec. at p. 588):

> Under the old system of levy courts and tax commissioners, when appointed by the executive, it was never said that they had not power to make assessments and levy taxes. They were not elected by the people nor accountable to them. They were appointed under legislative authority by the executive, and the state exercised its supreme power of taxing the people through their agency. So here, the state chooses to substitute commissioners in the place of the city authorities for the purpose of levying this tax, and we see no sufficient reason for denouncing the law on that account. That such a power may be delegated, see *Burgess* v. *Pue*, 2 Gill, 11.

And the same court, considering a similar question with relation to unusual powers conferred upon the State Board of Health by an act of the Maryland Legislature, said:

> The rule as laid down by the many text-writers is to the effect that the power to tax is inherently a legislative function, to be exercised only by that department of the government, and that it can be delegated only to municipal corporations. 37 Cyc. 725; Cooley on Taxation (2d Ed.) 61, 63, 65. And some of the decisions ably support this view. * * * *Van Cleve* v. *Passaic Valley Sewerage Commission*, 71 N. J. Law, 574 * * *.
>
> But the proposition of law is by no means as broad as its language might be taken to imply, and in numerous instances authority conferred by Legislatures upon school boards and school commissioners to fix the amount of the tax to be levied for the maintenance of schools has been sustained.
>
> The rule in this state is that laid down in *Baltimore* v. *State*, 15 Md. 376, 74 Am. Dec. 572.
>
> *Welch* v. *Coglan*, 126 Md. 1; 94 Atl. 384, 388.

It follows that at the time of the enactment of the Organic Act for Puerto Rico, March 2, 1917, it had been the almost universal custom throughout this country from the beginning of its history, in ordinances and statutes providing for local improvements, to delegate the function of precisely

fixing the aggregate amounts of the assessments against benefited lands, to administrative commissions, boards and officials. When Congress in that Organic Act (39 Stat. 958; 48 USCA 811) delegated to the Legislature of Puerto Rico "all local legislative powers in Puerto Rico," it must have been with the expectation and intention that the insular Legislature would thereby be empowered to follow the same practice and method with relation to such assessments.

C.—The case of *Van Cleve* v. *The Commissioners*, 71 N. J. Law 574, 60 Atl. 214, from which the Circuit Court of Appeals quotes (R. 105-106), is clearly distinguishable from the present case. In that case the state statute under consideration purported to delegate to an administrative board power to incur an indebtedness against the lands in a sewer district in any amount not in excess of nine million dollars and to levy annually a tax of unlimited amount upon the property in the district for purposes of amortization of said indebtedness and maintenance of the sewer system to be constructed. The sewer system was not only *not in existence* at the time of the attempted delegation of this power to the board, but its nature, extent and purposes were described only in the most general terms without any tangible limitation, express or implied, other than the $9,000,000 maximum, upon the discretion attempted to be conferred upon the board. As above pointed out, such conditions are not present in the case under consideration. The system whose cost of operation and maintenance the Commissioner of the Interior is here empowered to estimate was already in existence. Computations of its cost of operation and maintenance involve only fact finding and mathematical computation.

D.—THIS PARTICULAR POINT IS OF SPECIAL IMPORTANCE TO THE PETITIONER; *because, if the present opinion of the Circuit Court of Appeals is allowed to stand without modification, it will tend to upset the whole system of established practice that has been followed for almost 18 years, in the imposition and collection of special assessments for the main-*

tenance and operation of the South Coast Irrigation District, doubtless with resultant suits for repayments of moneys collected and expended.

This will be apparent at once upon a comparison between Act No. 49 of 1921, the act under attack in this case (App. I, *infra*, pp. 57-59) and Section 11 of its related prior act of August 8, 1913 (App. III, *infra*, pp. 69-70), under which the irrigation system in question is operated. In other words, if the provision in Act No. 49 requiring the State treasurer to compute the annual assessment in part on the basis of an estimate of the maintenance and operating cost to be prepared by the Commissioner of the Interior, constitutes an improper delegation of legislative authority, then the similar provision in Section 11 of the Act of 1913, above mentioned, is subject to the same objection.

CONCLUSION

For the reasons above set forth we respectfully submit that the writ of certiorari should be granted.

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APPENDICES

APPENDIX I

Act No. 49 of the Puerto Rican Legislature, Approved July 8, 1921

(No. 49)

AN ACT

Fixing a Tax on Certain Lands Using Water from the Southern Coast Public Irrigation System, on Which Lands No Tax Whatsoever Was Levied Under the Public Irrigation Law, and for Other Purposes.

Be it enacted by the Legislature of Porto Rico:

Section 1.—That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system.

Section 2.—That the tax to be levied on each tract of land receiving water from the irrigation system, but which under the law in force does not contribute towards defraying the cost of such system, shall be classified as follows: The Treasurer of Porto Rico shall have charge of fixing the total number of acres receiving water from the irrigation system which includes: (1) tracts of land subject to taxation pursuant to the provisions of the public irrigation law and amendments thereto, for the purpose of reimbursing the cost of the irrigation works; (2) tracts of land to which the Irrigation Commission acknowledged the right to the use of water or to which such right was acknowledged by the courts in cases of appeal, as rights acquired under the law for the use of water under prior concessions; (3) tracts of land irrigated with water delivered in accordance with acquired rights or concessions

which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or because of decisions of the Irrigation Commission, is delivered in whole or in part and is measured at the canals of the Irrigation Service system, and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts, by four, —that is to say, by the number of acre-feet per year established by the Public Irrigation Law as a normal rate for delivery per acre for the formation of the irrigation district; (4) parcels of land irrigated by water supplied because of acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or under decisions of the Irrigation Commission, is taken and measured in the rivers at the points of intake indicated in the said concessions; and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or as shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts in cases of appeal, by five. The Treasurer of Porto Rico shall then take amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operations and maintenance of the irrigation system during the following fiscal year (as provided under Section 11 of Act 128, approved August 8, 1913, which amends the Irrigation Law approved September 18, 1908), and shall add thereto or subtract therefrom, as the case may be, any resulting deficit between or surplus over, the amount expended and certified to as expended by the Commissioner of the Interior for expenses of operation and maintenance of the irrigation system during the preceding fiscal year, and the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation

and maintenance of the irrigation system during the aforesaid preceding fiscal year. The Treasurer shall then divide the amount so determined by the total number of acres computed as hereinbefore provided, and the result shall be and shall constitute the tax per acre which shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system.

This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law, and the moneys collected shall be covered into the Insular Treasury to the credit of a special trust fund known as the "Irrigation Fund," to be invested in the same manner and for the same purposes provided by the Public Irrigation Law and laws amendatory thereof.

Section 3.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 4.—This Act shall take effect ninety days after its approval.

Approved July 8, 1921.

APPENDIX II

Pertinent Extracts from an Act of the Puerto Rican Legislature, Approved September 18, 1908

AN ACT

To Provide for the Construction of an Irrigation System, and to Provide Revenues Therefor; for the Temporary Appropriation of Two Hundred Thousand Dollars to begin such Work, and for other Purposes.

Be it Enacted by the Legislative Assembly of Porto Rico:

Section 1.—The sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying to completion the preparation of working plans and specifications for the construction of an irrigation system for the district situated approximately between the river Patillas on the east and the river Portugues on the west, and irrigable lands on both sides of both rivers and for the commencement and prosecution of the work of construction thereof, and expenses in connection therewith, until such time as sufficient funds shall be available in the Treasury from the sale of the bonds provided for such purpose by legislative enactment.

* * * * * *

Section 6.—Upon the approval of the plans, and after consultation with the engineer in charge, the Executive Council shall provide for letting the construction of the work by contract, either as a whole or in parts. The said contract or contracts shall be awarded after due call for bids, advertised both in the Island of Porto Rico and in the United States, *provided, however,* that the Executive Council reserves the right to reject any or all bids.

* * * * * *

Section 10.—Upon the completion of the whole or any part of the irrigation system, the Commissioner of the In-

terior shall provide for its maintenance and operation, and shall, with the approval of the Executive Council, make and award all necessary contracts and make the necessary by-laws, rules and regulations for patroling and for the disposition and use of the water in the district.

* * * * * *

Section 23.—The Irrigation Commission shall ascertain the value of all water rights and concessions which shall have been relinquished and transferred to the People of Porto Rico, and shall determine what amount will constitute a just credit on account thereof to be given upon the taxes assessed upon the lands appurtenant thereto, as distinguished from other lands not carrying any water concessions, complying in all respects with the provisions of the contracts for the relinquishment of said rights.

Section 24.—Upon the completion of the labors of the Commission, they shall transmit to the Treasurer the lists and maps of the lands to be included in the Irrigation District, as decided upon by them.

They shall also transmit to the Treasurer of Porto Rico their findings as to the value of the relinquished water concessions, and the deductions from annual assessments by reason thereof.

The said Commission shall thereupon adjourn, to meet thereafter only upon call of the Governor.

Section 25.—The Treasurer shall thereupon advertise for six consecutive days in two daily newspapers of general circulation throughout the Island of Porto Rico the fact that the lists and maps of the Irrigation District and the valuations of the water concessions and deductions to be made by reason thereof, are on file in his office and in the offices of the Alcaldia of the towns comprised in the Irrigation District, where the same shall be open to the inspection of the public.

Section 26.—In the ascertainment of what lands are to be included in the Irrigation District, and in estimating the value of relinquished water rights and of corresponding de-

ductions from the taxes assessed upon the lands by reason thereof, the decision of the said Irrigation Commission shall be *prima facie* true and correct, but any person or persons claiming to be aggrieved by the findings and conclusions shall have thirty days and no longer from and after the first advertisement of the Treasurer, as hereinbefore provided, within which time to file in the office of the Secretary of Porto Rico a statement of the facts upon which they base such alleged grievance. The Secretary of Porto Rico shall at the expiration of said thirty days certify to the District Court for the District where the lands are situated and to which the claims refer, the statements of facts so filed, and the said District Courts shall set a time not exceeding thirty days thereafter for a general hearing upon all of the questions of such grievances in one proceeding, in each of said Courts in which the parties so claiming to have been aggrieved shall have the right as in an ordinary civil proceeding to procure the attendance of witnesses, and on behalf of The People of Porto Rico the Commissioner of the Interior shall have the same right. The District Courts shall hear and determine the matters so presented and give judgment as in a civil action, confirming, modifying, or reversing the findings of the Irrigation Commission thereon, and from the judgment so entered by the District Courts one appeal for each district only shall lie to the Supreme Court of Porto Rico for the reviewing of those controversies in which parties claiming to be aggrieved by the judgments of the District Courts shall have given notice in said District Courts within thirty days after the filing of judgment therein that they appeal therefrom. The said Supreme Court shall render final and conclusive judgment upon all of said controversies; in said appeals any of the said parties affected by said judgments, including The People of Porto Rico, shall be entitled to be heard for the purpose of securing a revision by said Supreme Court of the judgments of the District Court for error of law or of findings of fact, said hearings in the District Courts and said appeal to the Supreme

Court shall be in the nature of a special proceeding in which said Courts shall hear and determine the controversies of the various parties without formality and without regard to technicality and upon such special rules of procedure as shall be provided and fixed by said Courts, respectively, and the appeals to the Supreme Court shall be deemed emergency matters which shall have precedence upon the calendar of said Supreme Court over all other controversies whatsoever; in the matter of notice, record and all other features of said procedure the Supreme Court shall adopt such rules and regulations as it shall deem in its judgment sufficient to do substantial justice to all of the parties concerned, and said Supreme Court may call for additional testimony or evidence whenever in its opinion the same is necessary to enable the Court to properly review any finding of fact.

Section 27.—Upon all lands in the Irrigation District there shall be assessed a uniform amount per acre, upon a basis to be determined as herein provided.

Section 28.—The amount that shall be assessed and levied upon a given tract of land for any fiscal year shall be determined as follows:

The Treasurer of Porto Rico shall estimate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, plus the total amount due upon credits for the ensuing year on account of relinquished water rights; and shall add thereto the amount estimated and certified to him by the Commissioner of the Interior for the cost of maintenance and repairs for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the amount of any deficit or surplus, as the case may be, remaining in the Irrigation Fund from the operations of the current or prior fiscal years. He shall then add thereto an amount equivalent to five per cent of the total, as a margin of safety for delayed collections, and the amount thus determined by the Treasurer of Porto Rico shall be and constitute the total sum assessed for said fiscal

year, and the same shall be and is hereby levied upon the lands in question in the proportion that the area of any particular tract of land bears to the whole number of acres irrigated. The amounts resulting from such computation shall be extended upon the tax roll for the different tracts, respectively, embraced within said district with the proper deductions therefrom in proper cases as herein provided on account of relinquished water rights. The tax roll so extended shall be completed by the Treasurer of Porto Rico on or before the 1st day of July of each year, and is hereby imposed as a charge upon said lands in favor of The People of Porto Rico, and shall, from this date, constitute a tax, the lien of which shall be superior and prior in law to any right, claim or lien of any other nature save and except the general taxes of Porto Rico as provided by law, and same shall become due and the Treasurer of Porto Rico shall proceed to the collection thereof and to the embargo and sale of the land to enforce collection thereof in the manner and at the times now or hereafter provided by law for the collection and enforcement of other real property taxes. *Provided, however,* that in order not to inflict any unnecessary burden upon said lands during the period of construction, no assessment shall fall upon any tract of land until the part of the irrigation system in which the tract is situated has been in active operation for one year, but thereafter the said tract of land shall be liable, at the regular assessment dates, for the same proportionate assessments as would have been the case had all the lands in the District been included in the assessments for said year, under the prior provisions of this Section; *provided, further,* that payments made from the Irrigation Fund during the period of construction to meet interest or any expenses of maintenance and operation shall be assessed and refunded in the following special manner: The Auditor shall make an equal distribution thereof over the whole period of the life of the bonds and at the end of each fiscal year he shall certify to the Treasurer the amount thereof corresponding to the fiscal year to be included in the

amount to be assessed under the term "deficit" as aforesaid.

* * * * * *

Section 34.—This Act shall be known and referred to as the Public Irrigation Law and shall take effect from and after its approval by the Governor of Porto Rico.

Approved September 18, 1908.

APPENDIX III

Pertinent Extracts from Act No. 128 of the Legislature of Puerto Rico, Approved August 8, 1913

No. 128

AN ACT

To Amend Certain Sections of the Public Irrigation Law, approved September 18, 1908, as amended * * * and for other purposes.

Be it Enacted by the Legislative Assembly of Porto Rico:

Term of office of Irrigation Commission extended.

Section 1.—That the term of office of the Irrigation Commission, as at present constituted, or as hereafter constituted under the provisions hereof, insofar as the same was limited by Section 15 of the Public Irrigation Law, approved September 18, 1908, as amended March 9, 1911, be, and hereby is, extended to include such time as shall be required for the completion of the additional duties imposed upon the said Irrigation Commission by the provisions of this Act.

Section 2.—That the said Irrigation Commission shall have the power, and are hereby directed, to fix, according to the provisions hereinafter contained, the geographical boundaries of both a temporary and a permanent irrigation district; to determine what irrigable land shall be included therein; and to determine, as hereinafter provided, the value of water rights or concessions, and the basis for the computation of credits to be given on account thereof, on the taxes to be assessed as hereinafter provided upon the lands to which the said water rights or concessions are appurtenant.

* * * * * *

Appeals from decisions of the Commission in connection with the permanent irrigation district.

Section 10.—In the determination of what lands are to be included in the said permanent irrigation district, and of the value of relinquished water rights or concessions in connection therewith, and of

the basis for the computation of credits on taxation on account thereof, the decision of the said Irrigation Commission shall be considered *prima facie* true and correct. Any person or persons, however, including The People of Porto Rico, claiming to be aggrieved by any decision of the said Irrigation Commission as to the inclusion or exclusion of any land in or from the said permanent irrigation district, or as to the value of the said water rights or concessions in connection therewith, or as to the basis for the computation of credits on taxation on account thereof, shall have ninety days, and no longer, from and after the date of the beginning of the permanent irrigation district, as hereinbefore provided, within which time to file in the office of the Secretary of the District Court of San Juan a statement of the facts upon which such grievance is based. The District Court of San Juan shall set a time, as soon as may be thereafter, for a general hearing upon all of the questions of such grievances in one proceeding, and shall hear all such complaints filed in such court, respectively, together in one proceeding. The parties so claiming to have been aggrieved shall have the right, as in any ordinary civil proceeding, to procure the attendance of witnesses, and on behalf of The People of Porto Rico the Commissioner of the Interior shall have the same right. The district court shall hear and determine the matters so presented and give judgment as in a civil action, confirming, modifying or reversing the findings of the Irrigation Commission thereon. From the judgment so entered by the district court appeals shall lie to the Supreme Court of Porto Rico for the reviewing of those controversies in which the parties claiming to be aggrieved by the judgment of the said district court shall have given notice within thirty days after the filing of judgment therein that they appeal therefrom. Such an appeal may be taken by The People of Porto Rico and by any one or more of the complainants whose grievances were determined by the said district court. In case there is more than one appeal from the said district court, the said Supreme

Court shall consolidate and hear the same as a single appeal. The said Supreme Court shall render final and conclusive judgment upon all of the said controversies; in the said appeals any of the parties affected by the said judgments, including The People of Porto Rico, shall be entitled to be heard for the purpose of securing a revision by the said Supreme Court of the judgment of the said district court for error of law or finding of fact, the said hearings in the said district court and the said appeals to the said Supreme Court to be in the nature of a special proceeding in which the said courts, respectively, shall hear and determine the controversies of the various parties without formality and upon such special rules of procedure as shall be provided and fixed by the said courts respectively, and the said courts shall give public notice of the dates upon which hearings are to be held, at least thirty days in advance of the dates thereof. The appeals to the said Supreme Court shall be deemed emergency matters which shall have preference on the calendar of the said Supreme Court over all other controversies whatsoever except appeals pending in felony cases; in the matter of notice, record and all other features of the said procedure, the said Supreme Court shall adopt such rules and regulations as it shall deem sufficient to do substantial justice to all the parties concerned, and the said Supreme Court may call for additional testimony or evidence whenever in its opinion the same is necessary to enable the said Supreme Court properly to review any finding of fact. At any time up to within fifteen days of the date set for the hearing of such appeals in the said district court or in the said Supreme Court the owner or owners of land, or The People of Porto Rico, shall have a right to join in and be heard upon such appeal, and any owner or owners of land, or The People of Porto Rico, shall have a right to take an appeal from the decision of the said district court, whether or not they were parties to the appeal in the said district court, and any person so becoming a party to an appeal or appealing shall have the right to have the

question of their continued inclusion in or exclusion from the permanent irrigation district determined in any such proceedings, as well as to contest the exclusion or inclusion of land of others involved in the appeal.

Section 11.—The amount that shall be assessed and levied upon a given tract of land included in the permanent irrigation district shall be determined as follows:

Method and amount of taxation during the permanent irrigation district.

The Treasurer of Porto Rico shall calculate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, and shall add thereto the total amount due upon credits for the ensuing year on account of water rights or concessions; and shall further add thereto the amount estimated and certified as estimated to him by the Commissioner of the Interior for the cost of operation and maintenance of the irrigation system for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the estimated amount of any deficit or surplus, as the case may be, existing in connection with the Irrigation Fund from the operations of the current fiscal year. From this amount he shall subtract the amount estimated and certified as estimated to him by the Commissioner of the Interior as the receipts for the ensuing fiscal year from any water power developed in connection with the irrigation system (until such time as the total bonded indebtedness incurred on account of the irrigation system shall have been paid in full); and the amount estimated and certified as estimated to him by the Commissioner of the Interior as receipts for the ensuing fiscal year from any other sources except from the issues of bonds and from special assessments herein provided for to be levied upon the land in the permanent irrigation district. To the amount so determined the Treasurer shall add an amount equivalent to two per centum of the total as a margin of safety for delayed collections, and the amount thus determined by the

Treasurer of Porto Rico, subject to the limitations and provisions hereinafter set forth, shall be and constitute the total sum assessed for the said fiscal year, and the same shall be levied upon the lands at the time included in the permanent irrigation district (including any lands owned by The People of Porto Rico which form part of the said district, which lands shall be liable for and pay taxes levied hereunder in the same manner as the other lands included in the said irrigation district); *Provided, however,* That no deficit shall be carried over from the temporary irrigation district to the permanent irrigation district; *Provided, further, however,* That if any portion of the principal of any bonds falling due in any year cannot be paid under an assessment levied according to the provisions of this section, then the amount which cannot so be paid and for the refunding of which provision is hereinafter made, shall not be deemed a deficit in any subsequent year; *And provided, further*; That prior to the certifying by the Commissioner of the Interior of the amount thus estimated by him as receipts from water power, the Commissioner of the Interior may, if in his judgment it is advisable, deduct from the amount thus estimated by him a sum not to exceed 25 per cent of the said amount for the development and extension of the said water power.

The amount of credit on taxes to which any tract of land having a water right or concession shall be entitled on account of the relinquishment of the same shall be such percentage of such taxes as shall have been determined by the Irrigation Commission as hereinbefore provided.

No tract of land included in the permanent irrigation district shall pay any tax until it shall have received or have been offered water from the irrigation system for a period of twelve months (said water to have been received after the inclusion of the said land in the temporary irrigation district, or, if the said land is first included in the permanent irrigation district, after the said inclusion); but thereafter the said tract of land shall be liable at the regular assessment

dates to the same assessments as would have been the case had all the lands in the permanent irrigation district been assessed under the provisions of this section; *Provided,* That the said tract of land shall pay a tax for the portion of the half year (either fiscal or calendar, as the case may be), if any, remaining after the completion of the said period of twelve months, for which no taxes are paid in accordance with the foregoing provisions, and the tax due for any such portion of a half year shall be payable upon the first of the month succeeding the completion of the said period of twelve months for which no taxes are paid in accordance with the foregoing provisions.

Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said permanent irrigation district. The amounts resulting from such computation, or if such amounts exceed the amount which can be assessed under the provisions hereof, then such maximum amount as may be assessed under the said provisions, shall be extended upon the tax roll for the different tracts at the time comprising the permanent irrigation district, after first deducting in the case of any land entitled to a credit for a water right or concession the proper credit to which the said tract of land is entitled, computed according to the provisions hereinbefore contained. The tax roll so extended shall be computed by the Treasurer of Porto Rico on or before the first day of July of each year, and is hereby imposed as a charge upon the said lands (but not as a personal liability upon the owners thereof) in favor of The People of Porto Rico, and shall constitute a tax the lien of which shall be superior and prior in law to any right, claim or lien of any other nature, save and except the general taxes of Porto Rico as provided by law, and the same shall become due and the Treasurer of Porto Rico shall proceed to the collection thereof, and to the embargo and sale of the land to enforce the collection thereof, in the manner and at the time now or here-

after provided by law for the collection and enforcement of other real property taxes except that in the case of taxes assessed for a period of less than six months as hereinbefore provided the said taxes shall be assessed, levied and collected as hereinbefore provided; *Provided, however,* That anything hereinbefore contained to the contrary notwithstanding, (1) in case any assessment for any fiscal year determined as above provided shall amount to more than fifteen dollars ($15) per acre per annum, prior to deducting credits for relinquished water rights or concessions, then the assessment for such fiscal year shall exceed fifteen dollars ($15) per acre per annum only to the extent that it is necessary that the assessment should exceed the said rate in order to provide for the payment of interest, operation and maintenance, the deficit of the preceding year, if any; (*Provided, however,* That no deficit shall be carried over from the temporary irrigation district to the permanent irrigation district,) and the two per centum margin of safety provided for above, plus fifty thousand dollars ($50,000) for the payment of the principal of bonds falling due in the said fiscal year, less the surplus, if any, of the preceding year and any estimated receipts as income from other sources, as above provided; and (2) that no tax for the payment of any part of the interest and principal due upon outstanding irrigation bonds for any fiscal year, assessed as above provided shall be paid on any tract of land which has received or has been offered, prior to the date for payment of the said tax, water from the irrigation system for more than one full fiscal year, unless the said tract of land shall have received or shall have been offered, during the preceding fiscal year, water from the irrigation system, as shown by the records of the Irrigation Service, to the amount of at least one acre foot per acre during the first six months thereof and at least one acre foot per acre during the second six months thereof; *Provided, further,* That when in the above case the said tax is due upon the first of July terminating the fiscal year to which the above test is to be applied, then the said land

shall pay the said tax if it shall have received or shall have been offered water from the irrigation system during the first six months of the said fiscal year, to the amount of at least one acre foot per acre; *Provided, further,* That no tax for the payment of any part of the interest and principal due upon outstanding irrigation bonds for any fiscal year, assessed as above provided, shall be paid on any tract of land which has not, prior to the date for payment of the said tax, received or been offered water from the irrigation system for more than one full fiscal year, unless the said tract of land shall have received or shall have been offered water from the irrigation system as shown by the records of the Irrigation Service to the amount of at least one acre foot per acre during the next preceding half year (either calendar or fiscal) ending more than one month prior to the date of the said payment; *Provided, further, however,* That the foregoing exemptions from taxation conditioned upon the receipt by, or the offering to, the lands within the Irrigation district of a certain amount of water from the irrigation system shall cease to be operative and effective at such time after the beginning of the permanent irrigation district as the Chief Engineer of the Irrigation Service shall certify to the Commissioner of the Interior that each fundamental integral part of the irrigation system has been constructed.

The amount which may be included in the assessment for any one fiscal year for the payment of the principal of the bonds shall not exceed one hundred and fifty thousand dollars ($150,000).

Effect of an appeal upon status of land and taxation.

Section 12.—In case any land is included in the permanent irrigation district by the Irrigation Commission, and the owner or owners thereof, or The People of Porto Rico, shall appeal from such inclusion, the land shall be assessed and shall pay taxes at the rate and under the conditions fixed in the decision of the Commission appealed from until finally

excluded by the district court or the Supreme Court. If the said land is finally so excluded the Treasurer of Porto Rico shall refund, out of the Irrigation Fund, the amount of taxes paid during the existence of the permanent irrigation district, provided the land has, during the existence of the permanent irrigation district, received no water from the irrigation system. If the said land so excluded has received water from the irrigation system during the existence of the permanent irrigation district, the Treasurer of Porto Rico shall refund out of the Irrigation Fund any amount of taxes paid by the owner of the said land during the existence of the permanent irrigation district in excess of an average of fifteen dollars ($15) per acre per annum, prior to deducting credits for relinquished water rights or concessions. In connection herewith, and in reference to the revision and recovery of taxes assessed and collected under the provisions hereof, it shall be understood that the general tax laws of Porto Rico do not apply.

If any tract of land shall be excluded from the permanent irrigation district by the Irrigation Commission, but afterward included by virtue of an appeal either by the owner or owners, or by The People of Porto Rico, the said land shall, after such inclusion, be assessed at the same rate as the other lands in the district, but it shall not pay any tax until it shall have had or shall have been offered water from the irrigation system for a period of twelve months.

If any tract of land, after having been included in the temporary irrigation district, shall be finally excluded from the permanent irrigation district by the Irrigation Commission, or by the district court, or by the Supreme Court, the said land shall be entitled to continue to receive water from the irrigation system up to the harvesting of the crop if any, then growing upon the said land, and shall pay therefor at the same proportional rate of taxation and under the same conditions as the other land in the said permanent irrigation district.

Non-relinquished water rights or concessions.

Section 13.—In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession.

Commissioner of the Interior empowered to negotiate in relation thereto.

The Commissioner of the Interior is hereby authorized to negotiate with the owner or owners of such water rights of concessions, and with the owner or owners of any water rights or concessions heretofore relinquished or surrendered on condition that the lands to which they are appurtenant should form part of the irrigation district, and which lands have not been included by the Irrigation Commission, and the said Commissioner of the Interior shall be empowered to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof, which shall be delivered to the land to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof, with the power on behalf of the Irrigation Service to enter into agreement with such owner or owners for the relinquishment to The People of Porto Rico of such water rights or concessions, and for the delivery to the lands to which the said water rights or concessions are appurtenant of such fair equivalent. Before entering into any such agreement the Commissioner of the Interior shall consult the Attorney General of Porto Rico as to the validity and legal status of the water rights or concessions involved.

Powers of Commission in relation thereto.

In the case of any water right or concession in connection with which no such contract or agreement is made prior to Jnauary 1, 1914, the Irri-

gation Commission shall have the power to decide as to the validity and the legal status of any such water right or concession, and in the case of valid and subsisting water rights or concessions to determine what amount of water must be delivered by the Irrigation Service to the lands to which such water rights or concessions are appurtenant.

Rights of appeal in relation thereto.

Any owner or owners of any lands carrying water rights or concessions aggrieved by any such decision of the said Irrigation Commission, or the Attorney General of Porto Rico on behalf of The People of Porto Rico, may appeal from from the said decision to the district court of the district in which the said land is situated. The said appeal many be taken at any time within, and not after ninety (90) days from the date of the beginning of the temporary irrigation district if the said decision is made by the Irrigation Commission in connection with the formation of the temporary irrigation district, and within and not after ninety (90) days from the date of the beginning of the permanent irrigation district if the said decision is made by the Irrigation Commission in connection with the formation of the permanent irrigation district. An appeal may be taken to the Supreme Court of Porto Rico by any party, including The People of Porto Rico, aggrieved by the decision of the district court made as provided in this section, within thirty (30) days after the rendering of the said decision. Pending the final determination of the questions involved in any appeal taken under the provisions of this section, the decision of the said Irrigation Commission shall be binding both upon the Irrigation Service and the owner or owners of the water rights or concessions involved.

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Standard of water.

Section 18.—The amount of water which shall be set as a standard for the establishment of both the temporary and permanent irrigation districts shall be four acre feet per acre

per annum, the said standard to be applied on the basis of fair average years.

* * * * * *

Repeal of former laws.

Section 36.—That sections 21, 23, 24, 25, 26, 27, 28 and 30 of the Public Irrigation Law, approved September 18, 1908, as amended by subsequent enactments be and the same hereby are, repealed; that sections 7 and 8 of the Act amending the Public Irrigation Law, approved March 9, 1911, be repealed; that all other parts of the Public Irrigation Law and of the Act amending and amplifying said law, approved March 9, 1911, and all other laws and parts of laws, in conflict with this Act, be and the same hereby are, repealed.

Section 37.—This Act shall take effect immediately upon its approval.

Approved, August 8, 1913.

APPENDIX IV

PUERTO RICAN CODE PROVISIONS SHOWING THE CHARACTERISTICS OF THE SOCIEDAD EN COMANDITA

NOTE: The ensuing Spanish texts are quoted from the official "Compilación de los Estatutos Revisados y Códigos de Puerto Rico," 1911, to which the parenthetical references preceding the Spanish text of each article relate.

The Spanish text of each article is here followed immediately by the official English text, as it appears in the "Compilation of the Revised Statutes and Codes of Porto Rico," compiled in the Bureau of Insular Affairs, War Department, and published in 1913, as Senate Document No. 813, 61st Congress, to which the parenthetical references preceding the English text of each article relate.

Where the official English text of any article herein quoted is here followed by a second English version, the latter represents what counsel for the petitioner in this case regard as a more accurate translation, prepared by one of the attorneys for the petitioner in this case, with more careful regard to the precise legal significance of the original Spanish, retaining some Spanish words for which there is no satisfactory English equivalent, with some parenthetical explanatory notes, and with all variances from the official English text indicated by italics.

CODE OF COMMERCE

Official Spanish: LIBRO SEGUNDO.—De los Contratos Especiales del Comercio.

TÍTULO I.—De las Compañías Mercantiles.

Sección Primera.—De la Constitución de las Compañías y de sus Clases.

Official English: BOOK II.—Special Commercial Contracts.

TITLE I.—Commercial Companies.

Section I.—Manner of Establishing Companies and their Kinds.

Our version: BOOK II.—*Particular Kinds of Commercial Contracts.*

TITLE I.—Commercial Companies.

Section I.—Manner of Establishing Companies and their Kinds.

* * * * *

Official Spanish: (7675) ARTÍCULO 116. El contrato de compañía, por el cual dos o más personas se obligan a poner en fondo commún bienes, industria o alguna de estas cosas, para obtener lucro, será mercantil, cualquiera que fuese se clase, siempre que se haya constituído con arreglo a las disposiciones de este Código.

Una vez constituída la compañía mercantil, tendrá personalidad jurídica en todos sus actos y contratos.

Official English: (7675) ART. 116. Articles of association by which two or more persons obligate themselves to place in a common fund any property, industry, or any of these things, in order to obtain profit, shall be commercial, no matter what its class may be, provided it has been established in accordance with the provisions of this Code.

After a commercial association has been established, it shall have legal representation in all its acts and contracts.

Our version: Article 116. *The company contract* by which two or more persons obligate themselves to place in a common fund any property, industry or any of these things in order to obtain profit shall be commercial no matter what its class may be, provided it *is* established in accordance with the provisions of this Code.

After a commercial *company* has been established, it shall have *juridical personality* in all its acts and contracts.

* * * * *

Official Spanish: (7681) ARTÍCULO 122. Por regla general, las compañías mercantiles se constituirán adoptando alguna de las siguientes formas:

1. La regular colectiva, en que todos los socios, en nombre colectivo y bajo una razón social, se comprometen a participar, en la proporción que establezcan, de los mismos derechos y obligaciones.

2. La comanditaria, en que uno o varios sujetos aportan capital determinado al fondo común, para estar a las resultas

de las operaciones sociales dirigidas exclusivamente por otros con nombre colectivo.

3. La anónima, en que formando el fondo común los asociados por partes o porciones ciertas, figuradas por acciones o de otro manera indubitada, encargan su manejo a mandatarios o administradores amovibles que representen a la compañía bajo una denominación apropiada al objeto o empresa a que destine sus fondos.

Official English: (7681) ART. 122. As a general rule commercial associations shall be established by the adoption of any of the following forms:

1. The regular general copartnership in which all the partners, under a collective and commercial name, bind themselves to participate in the proportion which may be established, in the same rights and obligations.

2. The limited copartnership to which one or more persons contribute a specific amount of capital to a common fund, and become liable for the transactions of the firm executed exclusively by others under a collective name.

3. The corporation, in which the members form the common fund by means of specific parts or portions, represented by shares or in any other unquestionable manner, leaving its management to removable managers or administrators, who represent the company under an appropriate denomination according to the purpose or undertaking for which funds are to be employed.

Our version: ARTICLE 122. As a general rule, mercantile *companies may* be established by the adoption of any of the following forms:

1. The regular *"collectiva"* in which all the *members,* under a collective and commercial name, bind themselves to participate in the proportion(s) which *they may establish,* in the same rights and obligations.

2. The *"comanditaria" in* which one or more persons contribute a specific amount of capital to *the* common fund, *to abide the results of the common transactions* (*"de las operaciones sociales"*) *directed* by others under *the* collective name (*"con nombre colectiva"*).

3. The *"anónima"* in which the members form the common fund by means of specific parts or portions represented by shares or in any other *certain* manner, leaving its management to removable managers or administrators who represent the company under a *name* (*"denominación"*) *appropriate to the* purpose or undertaking for which the funds are to be employed.

* * * * *

Official Spanish: (7705) ARTÍCULO 146. La compañía en comandita girará bajo el nombre de todos los socios colectivos, de algunos de ellos o de uno solo, debiendo añadirse, en estos dos últimos casos, al nombre o nombres que se expresen las palabras "y compañía," y en todos, las de "sociedad en comandita."

Official English: (7705) ART. 146. Limited copartnerships must transact business under the name of all the members thereof, of several of them, or of one only, it being necessary to add in the latter two cases to the name or names given, the words "and company" and in in all cases the words "limited copartnership."

Our version: ARTICLE 146. The *compañía en comandita" will* transact business under the name of all the *general* members (*"socios colectivos"*) thereof, of several of them, or of one only, it being necessary to add in the latter two cases to the name or names given, the words "and company," and in all cases the words *"sociedad en comandita."*

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CIVIL CODE

Official Spanish: (3161) ARTÍCULO 27. Son personas jurídicas:

1. Las corporaciones, asociaciones y fundaciones de interés público, con personalidad jurídica reconocida por la ley.

Su personalidad empieza desde el instante mismo, en que con arreglo a derecho, hubiesen quedado válidamente constituídas.

2. Las asociaciones de interés particular, sean civiles,

mercantiles o industriales, a las que la ley concede personalidad jurídica.

Official English: (3161) SEC. 27. The following are artificial persons:

1. Corporations, associations and institutions of public interest, having artificial personality recognized by law.

The personality of such bodies shall commence from the moment of their establishment in accordance with law.

2. Private associations, whether civil, commercial or industrial, to which the law grants legal personality.

Our version: ARTICLE 27. The following are *juridical* persons:

1. Corporations, associations, and institutions (*foundations*) of public interest, with juridical personality recognized by *the* law.

Their personality *commences from the moment when in accordance with the law they have been validly established.*

2. Private associations, whether civil, commercial or industrial, to which the law grants *juridical* personality.

* * * * *

Official Spanish: (4673) ARTÍCULO 1567. La sociedad es un contrato por el cual dos o más personas se obligan a poner en común, dinero, bienes o industria, con ánimo de partir entre sí los ganancias.

Official English: (4673) SEC. 1567. Partnership is a contract by which two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves.

Our version: ARTICLE 1567. *The "sociedad"* is a contract by which two or more persons bind themselves to contribute money, property, or industry, to a common fund with the intention of dividing the profits among themselves.

* * * * *

Official Spanish: (4675) ARTÍCULO 1569. La sociedad civil se podrá constituir en cualquier forma, salvo que se aportaren a ella bienes inmuebles o direchos reales, en cuyo caso será necesaria la escritura pública.

Official English: (4675) SEC. 1569. Civil partnerships may be established in any form whatever, unless when real property or property rights should be contributed to the same, in which case a public instrument (*"escritura publica"*)

Our version: ARTICLE 1569. The *civil "sociedad"* may be established in any form whatever unless when real property or *real* property rights *shall* be contributed to the same, in which case a public instrument (*"escritura publica"*) shall be necessary.

* * * * *

Official Spanish: (4677) ARTÍCULO 1571. No tendrán personalidad jurídica las sociedades cuyos pactos se mantengan secretos entre los socios, y en que cada uno de éstos contrate en su propio nombre con los terceros.

Esta clase de sociedades se regiran por las disposiciones relativas a la comunidad de bienes.

Official English: (4677) SEC. 1571. Partnerships, the articles of which are kept secret among the partners, and in which each one of the latter may contract in his own name with third persons, shall have no judicial personality.

This kind of partnership shall be governed by the provisions relating to property held in common.

Our version: ARTICLE 1571. *The "sociedad" will not have juridical personality if the contract creating it is kept secret among the members and if each of the members contracts in his own name with third persons.*

This kind of *"sociedad"* shall be governed by the provisions relating to property held in common.

Official Spanish: (4678) ARTÍCULO 1572. Las sociedas civiles, por el objeto a que se consagren, pueden revestir todas las formas reconocidas por el Código de Comercio. En tal caso, les serán aplicables sus disposiciones en cuanto no se opongan a las del presente código.

Official English: (4678) SEC. 1572. Civil partnerships, on account of the objects to which they are devoted, may adopt all the forms accepted by the Code of Commerce. In

such case its provisions shall be applicable in so far as they do not conflict with those of this Code.

Our version: ARTICLE 1572. *The civil "sociedades" according to* the objects to which they *may be* devoted, may adopt all the forms *recognized* by the Code of Commerce. In such case its provisions shall be applicable *to them,* in so far as they do not conflict with those of this Code.

* * * * *

Official Spanish: (4700) ARTÍCULO 1594. El socio nombrado administrador en el contrato social, puede ejercer todos los actos administrativos sin embargo de la oposición de sus compañeros, a no ser que proceda de mala fe; y su poder es irrevocable sin causa legítima.

El poder otorgado después del contrato, sin que en éste se hubiera acordado conferirlo, puede revocarse en cualquier tiempo.

Official English: (4700) SEC. 1594. The partner who has been appointed manager in the articles of copartnership may execute all administrative acts, notwithstanding the opposition of his partners, unless he should act in bad faith; and his power is irrevocable without legitimate cause.

A power executed after the agreement, without there having been stipulated therein that it should be conferred, may be revoked at any time.

Our version: ARTICLE 1594. The *member named as* manager *in the company contract* (*"en el contrato social"*), may execute all administrative acts, notwithstanding the opposition *of other members of the company* (*"de sus compañeros"*), unless he should act in bad faith; and his power is irrevocable *except for good* cause.

A power executed after the *company contract* without *its* having been stipulated therein that it should be conferred, may be revoked at any time.

* * * * *

Official Spanish: (4706) ARTÍCULO 1600. Los socios no quedan obligados solidariamente respecto de las deudas

de la sociedad, y ninguno puede obligar a los otros por un acto personal, si no le han conferido poder para ello.

La sociedad no queda obligada respecto a tercero por actos que un socio haya realizado en su propio nombre o sin poder de la sociedad para ejecutarlo; pero queda obligada para con el socio en cuanto dichos actos hayan redundado en provecho de ella.

Lo dispuesto en este artículo se entiende sin perjuico de lo establecido en la regla 1 del artículo 1597.

Official English: (4706) SEC. 1600. Partners are not jointly bound with regard to the debts of the partnership, and none of them can bind the others by a personal act, if they have not granted him a power therefor.

The partnership is not liable with regard to third persons for an act which one partner may have performed in his own name or without a power from the partnership therefor; but it is liable to the partner in so far as said acts have benefited said partnership.

The provisions of this section shall be understood without prejudice to the provisions of rule first of section 1597.

Our version: ARTICLE 1600. *The members* are not jointly bound *for* the debts of the *"sociedad"* and none of them can bind the others by a personal act, if they have not granted him the power therefor.

The "sociedad" is not liable *to* third persons for an act which one *member* may have performed in his own name or without a power from the *"sociedad"* therefor; *but the "sociedad" will remain obligated with the member* in so far as *such* acts have *redounded to its profit.*

The provisions of this section shall be understood *to be* without prejudice to the provisions of rule first of Section 1597.

NOTE: Article 1597 provides that when no method of administering the *"sociedad"* has been stipulated, the following rule will be observed:

All of the members will be considered its agents, and whatever either of them does by himself will bind the *"sociedad,"* but any one of them may oppose the acts of

the others at any time before they have produced any legal effect.

Official Spanish: (4707) ARTÍCULO 1601. Los acreedores de la sociedad son preferentes a los acreedores de cada socio sobre los bienes sociales. Sin perjuicio de este derecho, los acreedores particulares de cada socio pueden pedir el embargo y remate de la parte de éste en el fondo social.

Official English: (4707) SEC. 1601. The creditors of the partnership shall be preferred to the creditors of each partner with regard to the partnership property. Without prejudice to this right, the private creditors of each partner may demand the attachment and sale at auction of the latter's share in the partnership capital.

Our version: ARTICLE 1601. The creditors of the *"sociedad"* shall be preferred to the creditors of *each* member with regard to the *company* property (*"los bienes sociales"*). Without prejudice to this right the *personal* creditors of each *member* may demand the attachment and sale at auction of the latter's share in the *common* capital (*"en el fondo social"*).

Official Spanish: (4708) ARTÍCULO 1602. La sociedad se extingue:

1. Cuando expira el término por que fué constituida.

2. Cuando se pierde la cosa, o se termina el negocio que le sirve de objeto.

3. Por la muerte natural, interdicción civil o insolvencia de qualquiera de los socios, y en el caso previsto en el artículo 1601.

4. Por la voluntad de cualquiera de los socios, con sujeción a lo dispuesto en los artículos 1607 y 1609.

Se exceptúan de lo dispuesto en los números 3 y 4 de este artículo las sociedades a que se refiere el artículo 1572 en los casos en que deban subsistir con arreglo al Código de Comercio.

Official English: (4708) SEC. 1602. Partnership is dissolved:

1. When the term for which it was constituted expires.

2. When the thing is lost, or the business for which it was constituted ends.

3. By the natural death, civil interdiction, or insolvency of any of the partners, and in the case prescribed in Section 1601.

4. By the will of any of the partners, subject to the provisions of sections 1607 and 1609.

The partnerships referred to in section 1572 are excepted from the provisions of numbers 3 and 4 of this section, in the cases in which they should exist, according to the Code of Commerce.

Our version: ARTICLE 1602. The *"sociedad"* is dissolved:

1. When the term for which it was constituted expires.

2. When the thing is lost, or the business for which it was constituted ends.

3. By the natural death, civil interdiction or insolvency of any of the *members*, and in the case prescribed in Section 1601.

4. By the *wish* (*"voluntad," that is, the voluntary action or election*) of any *one* of the *members*, subject to the provisions of Sections 1607 and 1609.

The *"sociedades"* referred to in *Art.* 1572 are excepted from the provisions of *subparagraphs* numbers 3 and 4 of this *article*, in *those* cases in which they *are organized in accordance with* the Code of Commerce.

* * * * *

Official Spanish: (4713) ARTÍCULO 1607. La disolución de la sociedad por la voluntad o renuncia de uno de los socios únicamente tiene lugar cuando no se ha señalado término para su duración, o no resulta éste de la naturaleza del negocio.

Para que renuncia surta efecto, debe ser hecha de buena fe en tiempo oportuno; además debe ponerse en conocimiento de los otros socios.

Official English: (4713) Sec. 1607. The dissolution of the partnership by the will or withdrawal of one of the partners shall only take place when a term for its duration has

not been fixed, or if this term does not appear from the nature of the business.

In order that the withdrawal may be of effect, it must be made in good faith at the proper time; notice thereof shall also be given to the other partners.

Our version: ARTICLE 1607. The dissolution of the "*sociedad*" by the *wish* ("*voluntad*") or withdrawal of one of the *members shall take place only* when a term for its duration has not been fixed, or *is not implied* from the nature of the business.

In order that the withdrawal may be of effect, it must be made in good faith *in opportune* time; notice thereof *must* also be given to the other members.

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Official Spanish: (4715) ARTICULO 1609. No puede un socio reclamar la disolución de la sociedad que, ya sea por disposición del contrato, ya por la naturaleza del negocio, ha sido constituida por tiempo determinado, a no intervenir justo motivo, como el de faltar uno de los compañeros a sus obligaciones, el de inhabilitarse para los negocios sociales, u otro semejante, a juicio de los tribunales.

Official English: (4715) SEC. 1609. No partner can demand the dissolution of a partnership which, either by a provision of the articles or by the nature of the business, has been constituted for a specified time unless there should exist sufficient reason, such as when one of the partners fails to comply with his obligations, or when he becomes incapacitated for the partnership business, or any other similar cause, in the judgment of the courts.

Our version: ARTICLE 1609. No *member* can demand the dissolution of a "*sociedad*" which, either by a provision of the *contract*, or by the nature of the business, has been constituted for a specified time, unless there should exist sufficient reason, such as when one of the *members* fails to comply with his obligations, or when he becomes incapacitated for the *common* business, or any similar cause, in the judgment of the courts.

CODE OF CIVIL PROCEDURE

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Official Spanish: (5035) ARTÍCULO 51. Toda acción deberá ejercitarse en nombre de la parte realmente interesada, excepto in los casos en que se dispone otra cosa por este Código. La comparecencia ante las cortes deberá hacerse por medio de abogado legalmente autorizado para ejercer su profesión conforme a las disposiciones de la ley.

Official English: (5035) SEC. 51. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in this Code. Appearance in court shall be made through an attorney legally empowered to exercise his profession under the provisions of this law.

Our version: ARTICLE 51. Every action must be prosecuted in the name of the real party in interest except *in those cases in which it is* otherwise provided in this Code. Appearance in court shall be made through an attorney legally empowered to exercise his profession under the provisions of this law.

* * * * *

Official Spanish: (5057) ARTÍCULO 73. Cuando dos o más personas, associadas en cualquier negocio, lo realizan bajo un nombre común, comprenda éste o no los nombres de dichas personas, los asociados podrán ser demandados bajo dicho nombre común, haciéndos en ese caso la citación a uno o más de los asociados; y al fallo del pleito quedarán obligados los bienes comunes de todos los asociados, de igual modo que si todos hubiesen sido demandados personalmente en virtud de su común responsabilidad.

Official English: (5057) SEC. 73. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such case being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, in the same man-

ner as if all had been named defendants, and had been sued upon their joint liability.

Our version: ARTICLE 73. When two or more persons, associated in any business, transact such business under a common name, whether such *common name* comprises the names of such persons or not, the associates may be sued by such common name, the summons in such case being served on one or more of the associates; and the judgment in the action shall bind the *common* property (*"los bienes comunes"*) of all the associates, in the same manner as if all had been named defendants *by reason of their common* liability.

APPENDIX V

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 210.

THE GREAT SOUTHERN FIRE-PROOF HOTEL COMPANY,
Petitioner,

vs.

BENJAMIN F. JONES, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL MEMORANDA FOR RESPONDENTS

(Filed March 24, 1900)

The action in this case is not brought by individuals, but by an association of individuals doing business as Jones & Laughlin, Limited. The bill avers that the association is one formed under and in accordance with the provisions of an act of the General Assembly of the State of Pennsylvania entitled "An act authorizing the formation of a partnership association in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances."

The date of the act, as set out in the bill, is given as June 23, 1874, as appears by the record. This date by mistake of the printer or some one else is incorrect, the proper date being June 2, 1874. The act will be found in the Session Laws of Pennsylvania for 1874, on page 271, and is the only act of 1874 referring to limited partnership associations. This act, together with its amendments and supplements, will be

found in the Revised Statutes of Pennsylvania, page 1086. By paragraph 16 of the act as found in the Revised Statutes, such associations are given the right to sue and be sued in the association name.

Paragraph 197 of the constitution of Pennsylvania provides that "The term 'corporations' as used in this article shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships" (Rev. Stat. Pa., p. 48).

The bill avers that complainant association is and was at all times mentioned in the bill a citizen of the State of Pennsylvania. Under the acts quoted above and the provision of the constitution referred to, this averment of citizenship was sufficient, the complainant association being, within the meaning of the statute, a corporation, in so far as such allegation of citizenship is concerned. The exact status of associations similar to that of complainant and organized under the same law is discussed and considered in Coal Company *vs.* Rogers, 108 Pa. State, 147.

That corporations are citizens within the meaning of the statute requiring proper citizenship of parties to confer jurisdiction upon the Federal courts is settled in many cases. (See Railway Co. *vs.* Whittner, 13 How., 270; Louisville R. R. Co. *vs.* Letson, 2d How., 497; also notes to sec. 152, Garland & Ralston's Federal Practice.)

Should the court be of opinion that the complainant association is not under the laws of Pennsylvania a citizen, but that it should be considered in the light of a general partnership, we still think the allegations of the bill as to citizenship are sufficient to confer jurisdiction.

In Express Co. *vs.* Kountze Bros., 8 Wall. 342, the declaration (see p. 347) described plaintiffs as "an association of persons carrying on the banking business in Omaha, Nebraska." This was held to be a sufficient averment of citizenship.

The bill here not only asserts that the association com-

plainant was a citizen of Pennsylvania, but sets out the names of all of its members and shareholders and alleges their office and place of business to have been in Pennsylvania.

Should the court, however, be of opinion that the bill, under no view that may be taken of it, sufficiently alleges diverse citizenship so as to confer jurisdiction, then we submit that in view of the fact that counsel for petitioners have not at any stage of the proceedings in any way objected to the jurisdiction of the court upon this or any other ground, and in further view of the fact that neither the circuit court nor the circuit court of appeals have intimated or considered any such objection, the complainant should be permitted, within the rule established in Robertson *vs.* Cease, 97 U. S. 646, to amend its complaint as to citizenship, the fact of such citizenship, both of the association and all of its members, being undisputed, and that the proper order allowing such amendment should be transmitted to the circuit court where the action was commenced.

At the request of counsel for cross-petitioner, Sossman & Landis, we suggest to the court that inasmuch as no such objection is urged as to jurisdiction in their case, the principal questions argued should be decided by the court as between them and the petitioner herein, irrespective of the judgment of the court as to jurisdiction in the case of Jones & Laughlin, Limited.

TALFOURD P. LINN,
Of Counsel for Respondents.